A

SYSTEM

OF

ENGLISH

Eccleſiaſtical Law.

Extracted from the

CODEX JURIS ECCLESIASTICI ANGLICANI of the Right Reverend the LORD BISHOP of *London*.

For the Uſe of Young Students in the Univerſities, *who are deſigned for* HOLY ORDERS.

By *RICHARD GREY*, D.D. Rector of *Hinton* in *Northamptonſhire*,

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1568/1339.



TO THE

Right Reverend Father in God,

EDMUND,

Lord Bishop of

LONDON,

Dean of the Chapels Royal,

And one of the

Lords of his MAJESTY's Most Honourable Privy Council.

My Lord,

THE following Syſtem of Eccleſiaſtical Law, extracted from Your Lordſhip's *Codex*, and publiſh'd with your Permiſſion, naturally ſhelters itſelf under your Lordſhip's Patronage. As it is Originally

ginally Your Own, your Lordſhip had an undoubted Right to it: Nor could I think of any other Way, more proper than this Addreſs, of expreſſing my moſt thankful Acknowledgments of the Honour you have done me, in permitting me to be an Inſtrument, under your Lordſhip, of promoting the Knowledge of our *Eccleſiaſtical* Conſtitution and Laws; and of conveying, in ſome Meaſure, the excellent Inſtructions and Obſervations, which are to be met with in your *Codex*, into the Hands of many, who might otherwiſe have wanted that Benefit and Satisfaction.

Your Lordſhip will, I hope, pardon me, if beſides the Diſcharging a Debt both of Juſtice and Gratitude, I lay hold of this Opportunity to gratify an Ambition, which I have long had, of ſubſcribing to the many Publick Teſtimonies of your Lordſhip's Merit. Not that I ſhall attempt, my Lord, to enlarge upon

thoſe Great Virtues and Abilities, of which your Lordſhip gave very Early Specimens, and which have ever ſince been indefatigably employed in the Advancement of Religion and Learning, and in the Service of the Publick. I ſhall only beg Leave to ſay, that the Zeal which your Lordſhip has ſo frequently, and ſo ſeaſonably, expreſſed againſt the Immoralities and Corruptions of the Age; the Concern you have manifeſted for ſupporting the *Rights* and *Diſcipline* of the Eſtabliſhed Church, both in your excellent Writings, and in the Execution of your Epiſcopal Office; the Vigilance, Wiſdom, and Reſolution with which you have oppoſed Infidelity, and the admirable Proviſion you have made againſt the ſpreading Infection of it, in your moſt judicious *Paſtoral Letters*, have given your Lordſhip the juſteſt Title to the Eſteem and Veneration of all, who have at

DEDICATION.

Heart the Cauſe of Virtue, the Intereſt of the Church of *England*, or the Honour and Preſervation of our moſt Holy Religion. Of this Number, I beſeech your Lordſhip to account me one, and, as ſuch, to be with the moſt profound Reſpect, and with my hearty Prayers, that God would long continue your Lordſhip an Ornament and Support to his Church,

My LORD,

Your Lordſhip's

Moſt devoted and moſt

Obedient Humble Servant,

R. GREY.

THE PREFACE.

THIS Abſtract was at firſt drawn up for my particular Satisfaction and Information, in ſuch Things as I think it nearly concerns every Clergyman to be well acquainted with, viz. *the Nature and Conſtitution of the Eſtabliſhed Church, its Government and Diſcipline, and the Rights, Privileges, and Duties of its Miniſters. Nor ſhould I have preſumed to have carried my Thoughts further in it, than to my own private Uſe, if* * *the Intimation given by that excellent Prelate, from whoſe Work it is taken, of his having intended ſomething of this Nature himſelf, had not made it rather* wiſh'd for *than* expected

* Out of both which (if God ſpare my Life) I would willingly draw a plain Analytical *Syſtem of* Engliſh *Eccleſiaſtical Law*, in the Nature of an Inſtitute, and recommend it to be peruſed, after the other *Syſtems*, by ſuch Perſons in the Univerſities, as are deſigned for Holy Orders, to initiate them in the Study and Knowledge of our Eccleſiaſtical Conſtitution. *Preſ. to the* Codex, *pag.* 8.

from his Lordſhip, conſidering the Multiplicity of Buſineſs which attends his High Station; and if, when I laid it before him for his Commands upon it, he had not with great Goodneſs and Condeſcenſion, approv'd *of the Deſign, and very readily* conſented *to the Publication of it.*

With this Encouragement, I thought I could not do a more acceptable Service to my Brethren of the Clergy, and to Young Students in the Univerſities who are deſigned for Holy Orders, than to give them, at an eaſy Expence, the Subſtance of a Book ſo highly Uſeful and Valuable; the great Reputation whereof amongſt the moſt eminent Profeſſors both of the Common *and* Civil *Law, has made it* very Rare *to be met with, and at a* Price more than double *to the firſt Subſcription.*

This favourable Reception of the Codex *ſufficiently juſtifies the Wiſdom and Diſcernment of the learned Author of it, who foreſaw that, how uſeful ſoever Abridgments might be in their proper Place,* "*Nothing under the* "*Original Laws and Conſtitutions* at length "*was capable of giving* full *Satisfaction* "*to the Mind*"; *and which therefore, with incredible Thought and Labour, he has ſet before us at* one *View, and in their proper* Order and Succeſſion; *with a Commentary conſiſting of Variety of Matter, and containing whatever tended to the Illuſtration or Improvement of any Part of them.*

Of

Of this Great Work, for which the Church and Clergy of this Nation ſtand ſo deeply indebted to his Lordſhip, I have attempted to give the Publick a faithful, and I hope not unuſeful, Abſtract. As to the particular Manner in which I have executed this Deſign, my Reaſon for throwing it into the Way of Queſtion and Anſwer will, I think, be obvious, in that it both quickens the Attention, *and aſſiſts the* Memory. *I have alſo forborn to clog the Body of the Book with Authorities and References, which, in my Opinion are foreign to the Nature of an Abridgment, and ſerve only to embaraſs* Ordinary Readers. *It might be thought ſufficient to have referred Theſe, once for all, to the Authority of the* Codex *itſelf, ſince if they have not That, 'tis highly probable they are alſo without the greateſt Part of the Law Books it refers to. However, as this* Syſtem *may poſſibly fall into the Hands of ſome, where that is not the Caſe; or who, having the* Codex, *may yet be deſirous of being directed,* Immediately, *to the Original Authorities. * I have ſubjoined in the Appendix a Compleat Table of them for that Purpoſe, with the reſpective Pages, both of the* Codex *and* Syſtem, *where they are made Uſe of.*

The Reader (whoſe Candour I intreat for any Omiſſions or Miſtakes that I may poſſibly have made) ought alſo to be acquainted

* Such Places in the Book, as refer to any Authority in the Table, have an Aſterisk prefix'd before them.

that

that he will find ſome Things, though neither many nor conſiderable, in the Syſtem, *which are not in the* Codex. *Such Additions as I had an Opportunity of making from* other *Books, relating to this Subject, and ſuch Alterations as have been made in Point of Law by Statutes, ſubſequent to the Publication of the* Codex, *are inſerted in their proper Places, and referred to their proper Authorities.*

To conclude, I have exactly followed his Lordſhip's Method in the Number and Order of the Titles, that thoſe who want more particular Satisfaction upon any Point, may have Recourſe for it to his Lordſhip's Book. For I am perſuaded there is no one, who has Opportunity and Ability to furniſh himſelf with ſuch a Treaſure of Uſeful Knowledge, but will be the more deſirous of doing it, for having peruſed this Abſtract, *which may either be looked upon as a Sort of* Larger Index *to it, and as ſuch, uſeful to thoſe who have the* Codex; *or as a Compendious View of the Principal Matter of it, and as ſuch, uſeful to thoſe who have it not.*

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A

SYSTEM

OF

English Ecclesiastical Law.

INTRODUCTION.

Of the Present STATE *of the* Power, Discipline *and* Laws *of the* CHURCH *of* ENGLAND.

Quest. WHAT do you mean by *English Ecclesiastical Law?*

Answ. The Law of the Church of *England*; or, that Part of the Law which concerns the Administration of Ecclesiastical Matters, under the Prince as supreme Head of the Church, as it stands distinguished from the Administration of Temporal Matters, under the same Prince, as Supreme and Sovereign in the State.

Q. How many Branches are there of Ecclesiastical Law?

A. Two:

A. Two: One, which relates to *contentious* Juriſdiction, or Cauſes between Party and Party; and another which relates to *voluntary* Juriſdiction, or ſuch Matters as concern Order and Diſcipline in the Church.

Q. How come Cauſes Matrimonial, Cauſes Teſtamentary, and the like, to be cognizable by ſpiritual Authority?

A. The Right which the Church has to Cognizance in theſe Caſes, is founded only upon the Conceſſions of Princes, enforced by the Authority of Law and Cuſtom.

Q. What Original has the Power which is veſted in the Biſhops for due Adminiſtration of *Government and Diſcipline* in the Church of *England*?

A. A two-fold Original; from the Word of God, and from the Laws of the Land.

Q. What Proof have you of this two-fold Original in a *legal* Senſe?

A. The Right which the Biſhops of the Church of *England* have to exerciſe Diſcipline upon the Foot of *Divine*, as well as *Human* Authority, is plainly recognized in the Form of Conſecration; which warrants every Biſhop, in the cleareſt and fulleſt Terms, to claim Authority, by the *Word of God*, as well as by *the Ordinance of this Realm*, for the correcting and puniſhing of ſuch as be unquiet, diſobedient and criminous (*i. e.* for the Exerciſe of all Manner of *ſpiritual Diſcipline*) within his Dioceſe.

Q. How does this amount to a Recognition of ſuch Power in the Biſhops in a *legal* Senſe?

A. Becauſe it has been confirmed by Parliament four ſeveral Times, *viz.* By the Act of *Edw.* VI. and in three ſeveral Acts of Uniformity, whereby the Forms of Conſecration and Ordination have been confirmed, together with the Book of *Common Prayer*.

Q. But do not the Laws relating to the Royal Supremacy, made in the Reigns of *Hen.* VIII. *Edw.* VI. and Q. *Elizabeth*, ſay, That all Eccleſiaſtical Authority is in the *Crown*, and deriv'd from thence? How are theſe Expreſſions, and others of the like Import to be underſtood?

A. The principal Intent of all ſuch Laws and Expreſſions, was to exclude the uſurped Power of the Pope; and they muſt be interpreted *conſiſtently* with that other Authority, which our Conſtitution acknowledges to belong to every Biſhop by the Word of God.

Q. What Power is it then that is agreed, on all Hands, to be derived from the *Crown?*

A. Juriſdiction *in Foro Exteriori*; or, The external Exerciſe and Adminiſtration of Juſtice and Diſcipline, in *ſuch* Courts, and in *ſuch* Ways and Methods, as are by Law and Cuſtom eſtabliſh'd in this Realm.

Q. Is the Church a mere Creature of the State?

A. No: Becauſe from what has been ſaid, it appears clearly, that ſhe has a *Divine Right* to the Exerciſe of Spiritual Diſcipline.

Q. But is not this to make the Church Independent of the State?

A. No: Becauſe 'tis acknowledged at the ſame time, that the External Adminiſtration of that Diſcipline, and of all Eccleſiaſtical Matters, in *eſtabliſh'd Courts*, and *eſtabliſh'd Forms*, is by Authority from the Crown, and in Subordination to the *Royal Supremacy*.

Q. Is this Authority veſted in the *Biſhops* only?

A. Originally in the Biſhops only, to whoſe Office that Power is annexed, and who, on that Account, have what we call *Ordinary* Juriſdiction; but by Delegation to Others alſo, who aſſiſt them in the Exerciſe and Adminiſtration of it, and who are intitled by them to the Honour and Privilege of being their Aſſiſtants.

Q. Who are they that have this delegated Power?

A. They are either thoſe who, however originally delegated, have long obtained the Exerciſe of *Ordinary Juriſdiction*, as *belonging, of courſe, and without any expreſs Commiſſion*, to their ſeveral Offices; ſuch as Archdeacons, Deans, Deans and Chapters, and Prebendaries; or thoſe whoſe Power is properly delegated, ſuch is that of Chancellors, Commiſſaries, and Officials, which they exerciſe by expreſs Commiſſion from the reſpective Ordinaries, to whoſe Stations or Offices ſuch Powers are annexed.

Q. What is the Office of a Chancellor?

A. The Name of Chancellor ſeems to have grown in Uſe in Imitation of the like Title in the State, inaſmuch as the proper Office of a Chancellor, as ſuch, was to be Keeper of the

Seals of the Archbiſhop, or Biſhop: But in fact, there are two Offices united in thoſe whom we now call Chancellors of Biſhops, which Offices the Law hath carefully diſtinguiſh'd, *viz.* that of *Official* and *Vicar General.*

Q. What is the proper Work of an *Official?*

A. The Hearing of Cauſes in the Conſiſtory Court.

Q. What is that of a *Vicar General?*

A. The Correction of Manners, and Puniſhment of Vice, and all other Parts of Epiſcopal Juriſdiction, except that of *Hearing Cauſes.*

Q. Whence did the Office of a Vicar General take its Riſe?

A. He was an Officer *occaſionally* conſtituted, when the Biſhop was called out of the Dioceſe by foreign Embaſſies, or Attendances in Parliament, or other Affairs, publick or private; and the Biſhops, before the Reformation, being frequently employ'd in Affairs and Offices of State; and many of thoſe who were not ſo employ'd, being, as at all Times they have, and will be, Aged and Infirm; by theſe Means the Vicar General came to be a *fix'd* and *ſtanding* Officer, who ſhould be ready (without the Trouble of a ſpecial Commiſſion for every Occaſion) to execute the Epiſcopal Power when the Biſhop himſelf was hindred by Infirmities, Avocations, and other Impediments.

Q. How came the two Powers of Official and Vicar General to be united?

A. The Officials being uſually reſident within the Dioceſe, and at the Epiſcopal See, and alſo

being Perſons of great Worth, and in Holy Orders, they were frequently employ'd as Vicars General of the Biſhops on ſuch Occaſions, 'till, by Degrees, the two Powers came to be united in the ſame Perſon, and mixed in the ſame Commiſſion.

Q. Did this Mixture of Powers alter the Nature of the Powers themſelves?

A. No: Becauſe, though held by the ſame Perſon, they were conveyed, as well as held, under the ſame Conditions and Limitations that they were in their ſeparate State.

Q. Under what Limitations ſtood the Office of a Vicar General in its ſeparate State?

A. The Biſhop was under no *Neceſſity* of appointing a Vicar General, and when appointed, his Power only took Place when the Biſhop, by Avocation or Infirmity, was diſabled.

Q. Does it remain ſo now in its united State?

A. Yes, it may be appointed, or not appointed, at the Pleaſure of the Biſhop; who may either execute thoſe Powers, *i. e.* do his own proper Duty in Perſon, or iſſue ſpecial Commiſſions, as ſpecial Occaſions call for them: And, being appointed, the Perſon is ſtill under the Biſhop's Directions, as to exerting, or not exerting the Powers that belong to it: So that whatever Neceſſity there may be upon the Biſhop to appoint an *Official* or Chancellor for the *Hearing of Cauſes*, the *voluntary Juriſdiction* is left ſolely in himſelf, to be exerciſed in ſuch Manner, or conveyed under ſuch Reſtrictions and Limitations, as he ſhall judge beſt for the Order and Diſcipline of the Church.

Q. What

Q. What Uſe do you make of this Obſervation?

A. To clear the Conſtitution of our Church from a Reproach that is often caſt upon it, *viz.* the Adminiſtring its Government and Diſcipline by the Hands of Laymen: For from what has been ſaid concerning Chancellors and their Commiſſions (and the ſame holds good in the Caſe of Commiſſaries, and of the Officials of Archdeacons) it is evident, that no Adminiſtration that is *properly ſpiritual*, can come into any Hands whatever, otherwiſe than by the *voluntary Choice*, and *expreſs Act* or *Concurrence* of the *Biſhop* himſelf; and therefore, with regard to the *Conſtitution* of our Church, the Adminiſtration of Diſcipline by Laymen is merely *accidental*.

Q. What is a Commiſſary?

A. Officialis foraneus, or a Perſon appointed to hear Cauſes in remoter Parts of the Dioceſe by ſpecial Commiſſion.

Q. What is an Archdeacon's Official?

A. One who has the Authority and Juriſdiction of the Archdeacon delegated to him.

Q. You have hitherto been ſpeaking of the Power of the Church, and the proper Adminiſtrators of that Power: What are the Laws by which it is to be adminiſtred?

A. Common Law, Canon Law, and Statute Law.

Q. What is the Common Law of the Church?

A. Jus non ſcriptum Eccleſiaſticum; or Antient Cuſtom, and * immemorial Practice relating

to ſpiritual Affairs; which is a Law or Rule of the ſame Force and Obligation in the Spiritual Adminiſtration, that the like immemorial Practice, relating to Temporal Affairs, is in the Temporal Adminiſtration.

Q. Where may we become beſt acquainted with the Common Law of the Church?

A. In the Commentaries of *Lyndwood* and *John de Athon*; the firſt upon the *Provincial*, the ſecond upon the *Legatin* Conſtitutions; whoſe Authority, eſpecially that of the firſt, is greatly regarded in the Courts of Civil and Canon Law, not only as the Opinions of Perſons eminently learned in both Laws, but chiefly, as they are *Witneſſes of the Practice* of the Church of *England* in their reſpective Ages. Which Practice, in very many Caſes, having continued the ſame, and been derived down to the preſent Age, upon their Evidence and Authority, their Rules are become, in effect, the Common Law of the Church, and in that Reſpect deſerve great Regard, not only in the Spiritual, but alſo in the Temporal Courts.

Q. What are the Provincial Conſtitutions?

A. Such as were publiſh'd from Time to Time by ſeveral Archbiſhops of *Canterbury*, from *Stephen Langton*, who was Archbiſhop *Anno* 1206. *Temp. Joannis R.* to *Henry Chichley* incluſive, who was Archbiſhop *Anno* 1414. *Tem. Hen.* V.

Q. What were the *Legatin* Conſtitutions?

A. Such as were made in National Synods or Councils, held here by the Pope's Legates,

Otho

Otho and *Othobon*, the former of which was Legate from *Gregory* IX. *Anno* 1230, the latter *Anno* 1268.

Q. How is the Canon Law divided?

A. Into Foreign and Domeſtick.

Q. What is the Foreign?

A. That which we commonly call the Body of the Canon Law, conſiſting of the Canons of Councils, Decrees and Decretals.

Q. What are the Decretals?

A. The *Decretals* were collected and digeſted by Order of Pope *Gregory* IX. conſiſting mainly of Papal Deciſions in the Time of himſelf and his Predeceſſors. Which Deciſions were made either in Councils, or upon particular Diſputes, which were occaſionally appealed to *Rome*, and determined there, and thoſe Determinations ſignified to the Parties concerned by decretal Epiſtles.

Q. Upon what Foot do we receive foreign Canons, *&c.*?

A. They obtained in *England*, by Virtue of their own Authority, in like Manner as they did in other Parts of the Weſtern Church, 'till the Time of the Reformation; and from that Time have continu'd upon the Foot of Conſent, Uſage and Cuſtom.

Q. Did the Church of *England* admit and practiſe thoſe Rules abſolutely?

A. No; only with theſe two Reſtraints, that they were adapted to the Conſtitution of this Church, and ſo were *proper* Rules; and not contradicted by the Laws of the Land, and ſo were *legal* Rules.

Q. How

Q. How far were they received?

A. As in all Caſes, where no Rule was provided by our Domeſtick Laws, the Body of the Canon Law was received by the Church for a Rule; ſo there was no Objection againſt receiving it in any Inſtance whatever, unleſs it appeared, in that particular Inſtance, to *be foreign* to our Conſtitution, or *contrary* to our Laws.

Q. What are Domeſtick Canons?

A. Thoſe which have been made from Time to Time by Eccleſiaſtical Authority, within this Realm, whether before or ſince the Reformation.

Q. What do you mean by Eccleſiaſtical Authority?

A. As *England* is governed by two diſtinct Adminiſtrations, one Spiritual, for Matters of a Spiritual Nature, and the other Temporal, for Matters of a Temporal Nature; ſo for the ſame Ends hath it two Legiſlatures, the one conſiſting of Perſons Spiritual, and the other of Perſons Temporal: Whoſe Buſineſs it is to frame Laws for the Government of Church and State; and theſe Laws, being enacted and confirmed by the Prince, as Sovereign and Supreme Head, become Obligatory to the People, and Rules for Adminiſtration of Juſtice, in Spiritual and Temporal Matters.

Q. Were the Canons and Conſtitutions, made in Provincial Synods, always enacted and confirmed by the Prince?

A. No;

A. No; before the Reformation they received their *laſt* Confirmation from the *Metropolitan*, who had alſo Power to *publiſh* and *promulge* them. But by a Statute in the 25th of *Henry* VIII. 'tis provided, that no Conſtitutions ſhould thenceforth be enacted or promulged, without the King's Royal Aſſent and Licence. Which Statute is a *Recognition and Affirmance of the Legiſlative Power* of the Church, only ſubjecting it to greater Reſtraints than it had before.

Q. With what Limitations and Reſtrictions do the Canons and Conſtitutions, that have been made ſince that Statute, enjoy their Force and Authority?

A. When the Matter of a Canon is merely Eccleſiaſtical, and not contrary to the Prerogative Royal, nor to the Statutes and Cuſtoms of the Realm, * ſuch Canon is properly Part of the Law of the Land; and it hath been reſolved, that when the Convocation make Canons concerning Matters which properly appertain to them, and the King hath confirmed them, they are binding * to the *whole Realm.*

Q. What Canons have we ſo authorized?

A. Thoſe made in the Convocation of the Province of *Canterbury*, in the 1ſt Year of King *James* I. and which are therefore diſtinguiſhed by the Name of the Canons of 1603. They are generally taken, and in many Places by Repetition Word for Word, from Canons and Conſtitutions made in the Reign of Q. *Elizabeth*, and which being confirmed only for herſelf,

and

and not expreſly for her Heirs, are thought to have loſt their Authority by her Death, 'till many of them had new Life given them in theſe Canons of 1603. which were alſo receiv'd, and paſs'd two Years after in the Province of *York*.

Q. What is the Statute Law conſidered as Part of the Eccleſiaſtical Law of *England*?

A. Statutes made from Time to Time to enforce both Common and Canon Law, and which are therefore to be conſidered as Supplemental to both; for the Quiet and Security of the Clergy againſt Oppreſſions and Invaſions of all Kinds, and for the Aſſiſtance of the Church, by Addition of Temporal Penalties, in Caſes which Spiritual Cenſures could not eaſily reach, or in which they were like to prove ineffectual.

Q. Of what Nature are Statutes which concern the Church and Clergy made before the Reformation?

A. They are directly levell'd againſt Violences committed upon their Poſſeſſions or Perſons, and againſt the Incroachment of the Temporal Courts upon the Spiritual Juriſdiction.

Q. What hath the State done with Regard to the Church *ſince* the Reformation?

A. It hath interpoſed by many Acts, for the Suppreſſion of Vice and Immorality, for the better Ordering of the Poſſeſſions of the Church, the Augmentation of her Revenues, and the more eaſy Recovery of her juſt Rights.

Q. Are the Rubricks in the Liturgy a Part of the Statute Law of the Land?

A. Un-

A. Undoubtedly; as having been confirmed in Parliament by the ſeveral Acts of Uniformity, in the Reigns of *Edward* VI. Q. *Elizabeth*, and *Charles* II.

Q. Are the Articles, commonly called the XXXIX Articles, a Part of the Statute Law?

A. Yes, they are properly ſo, tho' Originally made in Convocation, as they are requir'd to be ſubſcribed and aſſented to by an expreſs Act of Parliament, 13 *Eliz. c.* 12. Theſe were moſtly taken from a like Body of Articles, compil'd in the Reign of King *Edward* VI.

TIT. I.

Rights, Privileges *and* Immunities *of the* CHURCH *and* CLERGY.

Q. HOW, and upon what Account have the Clergy been diſtinguiſh'd from the Laity, in Reſpect of their Rights and Privileges?

A. The Clergy, being devoted and conſecrated to the immediate Service of Religion, have ever been the peculiar Care of Chriſtian States, who have expreſs'd that Care in providing for their Maintenance, Quiet and Security, and ſupporting them in their Privileges and Immunities.

Q. What Inſtance have you of this in our own Nation?

A. 'Tis obſervable that divers of our Kings, before the Conqueſt, particularly *Edward* the Elder, *Edgar*, *Canute* and *Edward* the Confeſſor, begin their Laws, with ſpecial Proviſions for the Liberties of the Church and Clergy: And the firſt Article of *Magna Charta*, or the Confirmation of Liberties granted by *Henry* III.

Anno

Anno 1225. is in theſe Words: " Firſt, we have " granted to God, and by this our preſent " Charter have confirmed for us and our Heirs " for ever, that the Church of *England* ſhall be " free, and ſhall have all her whole Rights and " Liberties inviolable.

Q. What is the Meaning of *Granting to God?*

A. When any thing is granted *for God*, it is * deem'd in Law to be granted *to God*; and whatſoever is granted to his Church, for his Honour, and the Maintenance of his Religion and Service, is granted *for* and *to* God.

Q. What is here meant by the Church of *England?*

A. All Eccleſiaſtical Perſons within the Realm, their Poſſeſſions and Goods.

Q. What Care hath been taken for the Preſervation of this Charter?

A. It was confirmed and atteſted by many Biſhops and Abbots, and Temporal Lords, and *A.* 1253. a moſt ſolemn Excommunication and Sentence of Curſe, was, by Authority of Parliament, ordered to be denounced againſt all thoſe who ſhould then in any Point reſiſt or break, or in any Manner hereafter procure, counſel, or anywiſe aſſent, to reſiſt or break it; or go about it, by Word or Deed, openly or privily, by any Manner of Pretence or Colour. It was afterwards renew'd and made perpetual by King *Edward* I. confirmed again by King *Edward* III. and in ſeveral ſubſequent Parliaments.

Q. What

Q. What further Inſtance can you give of the Regard of the State to the Clergy?

A. Beſides this and other general Confirmations of the Rights of the Clergy, in Conjunction with thoſe of the Laity, we meet with divers Acts and Clauſes eſpecially in Favour of our Church and Clergy, and many of them made at the ſpecial Requeſt of the Commons in Parliament, whoſe Petitions frequently begun with ſome general Clauſe to that Effect.

Q. Does the Prince at his Coronation promiſe any Thing in Behalf of the Church?

A. Yes: It is now become Part of the Coronation Oath, that he will preſerve unto the Biſhops and Clergy of this Realm, and to the Churches committed to their Charge, all ſuch Rights and Privileges as by Law do or ſhall appertain to them, or any of them.

Q. What are thoſe Rights and Privileges?

A. They are ſuch as concern either their Perſons or their Poſſeſſions.

Q. What are the Privileges and Immunities of the Clergy, as to their Perſons?

A. By Common Law a Clergyman may not be compell'd to ſerve * in a Temporal Office; nor * to ſerve in the Wars in Perſon; nor his Body taken by Force of any Proceſs upon a *Statute Staple*, or *Statute Merchant*; nor in an Action of Account, *&c.* be arreſted by *Capias*.

Clergymen are not oblig'd to ſerve on Juries, nor to appear at Turns and Leets.

The laying violent Hands upon a Clerk ſhall be puniſhed by Excommunication or Penance, unleſs

unleſs in Caſe of an Arreſt by Proceſs of Law; but for an * *Aſſault only*, it has been held that the Suit ought to be at Common Law.

Clergymen ſhall not be arreſted whilſt they attend to Divine Services upon grievous Forfeiture, by 50 *Ed.* III. *c.* 5. upon Pain of Impriſonment, by 1 *Ric.* II. *c.* 15. provided there be no Fraud or Colluſion.

Q. What ſhall be conſtrued Attendance upon Divine Service, with regard to theſe Statutes?

A. My Lord *Coke* ſays, he ſaw a Report, in the Time of Queen *Mary*, wherein it was held, that * *eundo, morando, redeundo*, to celebrate Divine Service, the Prieſt ought not to be arreſted, nor any who aids him in it.

Q. What Privileges have the Clergy in *Criminal* Caſes?

A. They are us'd like other Men, except as to the Burning in the Hand for Felony, from which, upon producing their Orders, they ought to be freed. And tho' they have had the Privilege of the Clergy for a Felony, yet they may again have their Clergy, and ſo cannot a Layman.

Q. What are the Privileges of the Clergy, with regard to their Poſſeſſions?

A. By the Common Law a Clergyman is not bound to pay *Tolls*, or other *like* Cuſtoms, for his Eccleſiaſtical Goods, nor to pay towards the Repairs of *Bridges* or *Banks*, by Reaſon of his Eccleſiaſtical Poſſeſſions; and

the Law has provided * *Special Writs* in Maintenance of *these* *Exemptions.* But the later Opinion hath been, That the Clergy are liable to *all publick Charges*, impoſed by Act of Parliament, where they are not ſpecially excepted. So that for want of *Special Proviſoes* in their Behalf, their ancient and unqueſtionable Right ſeems now to be utterly extinguiſhed, with regard to thoſe Exemptions from *Secular* Burdens, which, till later Days, they have had an undiſturb'd Enjoyment of.

Q. What Privileges have they, with regard to *Eſtate* and *Intereſt*, by Statute?

A. They are to be amerc'd, not according to their Benefice, but their Lay-Tenement, by *Magna Charta:* Nor ſhall the King's Officers make Diſtreſſes of their Beaſts in the King's Highway, and in Fees, (*i. e.*) Lands wherewith Churches have been endow'd, except ſuch as are newly purchaſed. 9 *Ed.* II. *c.* 9.

Q. What is the Viſible Church of Chriſt?

A. A Congregation of faithful Men, in the which the pure Word of God is preached, and the Sacraments duly adminiſtred, according to Chriſt's Ordinance, in all thoſe Things that of Neceſſity are requiſite to the ſame. *Art.* 19.

Q. Is the Church of *England* a *True and Apoſtolical Church?*

A. Yes: And to deny her to be ſo, or to call the Government of the Church of *England* antichriſtian, or repugnant to the Word of

God, or to affirm that ſuch Miniſters as refuſe to ſubſcribe to the Form and Manner of God's Worſhip in the Church of *England*, and their Adherents, may truly take unto them the Name of another Church not eſtabliſh'd by Law, *&c.* ſhall be Excommunication. *Can.* 3. 7. 10.

Q. How is the Church of *England* ſaid to be *by Law eſtabliſh'd?*

A. With Regard to the ſeveral Canons and Statutes made for the Eſtabliſhment and Preſervation of the Doctrine, Worſhip, Diſcipline, and Government thereof.

Q. What are the moſt remarkable of thoſe Statutes?

A. The Statute 13 *Eliz. c.* 12. intituled, *An Act for the Miniſters of the Church to be of ſound Religion*; and that of 13 *Car.* II. *c.* 4. commonly call'd, *The Act of Uniformity:* Both which, with all and ſingular other Acts, at that Time in Force, for the Security of the true Proteſtant Religion, profeſs'd and eſtabliſh'd by Law in the Church of *England*, by Stat. *6 Ann. c.* 5. are to remain and be in full Force for ever. And in the ſame Statute 'tis enacted, that every King or Queen ſhall, at their Coronation, ſwear to maintain and preſerve inviolably the ſaid Settlement of the Church of *England:* And that the ſaid Act ſhall for ever be holden, and adjudg'd a fundamental and eſſential Part of the Union between *England* and *Scotland.*

TIT. II.

Of the Supreme Head of the CHURCH *of* ENGLAND.

Q. WHO is the ſupreme Head of the Church?

A. * The King's Majeſty, under God, is the only ſupreme Governor of this Realm, and of all other his Highneſs's Dominions and Countries, as well in all Spiritual or Eccleſiaſtical Things or Cauſes, as Temporal; and no foreign Prince, Perſon, Prelate, State, or Potentate, hath, or ought to have, any Juriſdiction, Power, Superiority, Pre-eminence, or Authority, Eccleſiaſtical or Spiritual, within his Majeſty's ſaid Realms, Dominions, and Countries. *Can.* 36.

Q. What is included in the Notion of the King's Supremacy?

A. * Not that the Kings or Queens of this Realm, Poſſeſſors of the Crown, may challenge Authority and Power of miniſtring of *Divine Service* in the Church; but that only Prerogative, which we ſee to have been given always to all godly Princes, in holy Scriptures by God himſelf, that is, that they ſhould rule all Eſtates and Degrees committed to their Charge by God, whether they be Eccleſiaſtical or Temporal, and reſtrain with the Sword the Stubborn and Evil-doers. *Art.* 37.

Q. When

Q. When was the King's Supremacy firſt recogniz'd?

A. The firſt Recognition of this Supremacy was made by the Clergy in Convocation, upon the Occaſion of a Grant of 100000*l.* made by them to obtain from King *Henry* VIII. a general Pardon of all Forfeitures by them incurr'd upon the Statutes of *Proviſors* and *Præmunires*; particularly for their having ſubmitted to the Legatine Authority of Cardinal *Wolſey*, contrary to the Tenor of the ſaid Statutes.

Q. Was this Recognition readily made?

A. The Grant of the Subſidy, as to the Money, appears to have paſs'd the Convocation quickly and eaſily; but the King refuſed to accept the Gift, or grant the Pardon, unleſs after the Words *Eccleſiæ & Cleri* Anglicani, in the Form of the Grant, they would add, *Cujus Protector & Supremum Caput is ſolus eſt*; and this was for ſome Time under Debate: But the King was not to be ſatisfied without it, and at length it was agreed to in theſe Words, *Eccleſiæ & Cleri* Anglicani *cujus ſingularem Protectorem, unicum & Supremum Dominum, & quantum per Chriſti legem licet, etiam Supremum Caput, ipſius Majeſtatem recognoſcimus.*

Q. Was this Recognition of the Supremacy *by the Clergy* thought ſufficient?

A. For Corroboration and Confirmation thereof it was afterwards enacted, by *Authority of Parliament*, 26 *Hen.* VIII. *c.* 1. that the

King, his Heirs and Succeſſors, Kings of this Realm, ſhould be taken, accepted, and reputed the only ſupreme Head in Earth of the Church of *England*, and have and enjoy, annex'd and united to the Imperial Crown of this Realm, as well the Title and Style thereof, as all Honours, Dignities, Pre-eminences, Juriſdictions, Privileges, Authorities, Immunities, Profits, and Commodities, to the ſaid Dignity appertaining; with full Power and Authority, from Time to Time, to viſit, repreſs, redreſs, reform, order, correct, reſtrain and amend, all ſuch Errors, Hereſies, Abuſes, Offences, Contempts and Enormities whatſoever, which, by ſpiritual Authority or Juriſdiction, ought or may be lawfully reform'd, *&c.*

Q. Does this Act ſtill continue in Force?

A. This Act, and all other Acts and Statutes againſt the Papal Supremacy were repeal'd by Queen *Mary*, and the Authority of the See of *Rome* again eſtabliſh'd; till in the firſt Year of Queen *Elizabeth*, an Act was paſs'd to reſtore to the Crown the ancient Juriſdiction over the Eſtate Eccleſiaſtical and Spiritual, and aboliſhing all Foreign Powers repugnant to the ſame.

Q. How was this Juriſdiction thus annex'd to the Crown to be executed?

A. By Virtue of a Clauſe in the ſaid Act, it might be executed by Commiſſioners, under the Great Seal; and a High Commiſſion Court was accordingly erected: But upon Account

count of their exceeding their Commiſſion, both as to the *Extent* and *Exerciſe* of their Authority, it was aboliſh'd by Statute 17 *Car.* I. *c.* 11. and enacted, that no ſuch Court as the High Commiſſion ſhould be erected for the future. And accordingly the Commiſſion granted by King *James* II. and all other Commiſſions and Courts of the like Nature, are now declared by Act of Parliament, 1 *Will. & Mar. c.* 2. *illegal* and *pernicious.*

Q. What Cenſure does the *Canon* inflict upon Impugners of the King's Supremacy?

A. Excommunication *ipſo facto.* *Can.* 2.

Q. What Penalty is there upon refuſing the Oath of Supremacy?

A. A *Præmunire*, of which *Vid.* p. 24.

TIT. III.

Papal Incroachments *in* England *aboliſhed, and the Powers* reſtor'd *to the* KING, *or veſted in the* ARCH-BISHOP *of* CANTERBURY.

Q. DID the Encroachments of the See of *Rome* meet with no Oppoſition in *England* till the Reformation?

A. Tho' the Authority of that See within this Realm was not *utterly extinguiſh'd* till the Reformation, yet the Uſurpations and Encroachments of it had been frequently and vigorouſly oppos'd by our Kings and Parlia-

ments long before that Time, as appears from the Conſtitutions of *Clarendon*, and the ſeveral Statutes of *Proviſion* and *Præmunire*.

Q. What are the Conſtitutions of *Clarendon*?

A. Articles ſworn to and ſign'd both by the Clergy and Laity, at a Convention of the Lords Spiritual and Temporal, at *Clarendon* in *Wiltſhire*, in the Reign of *Hen.* II. in Recognition of the Rights of the Crown, particularly forbidding Appeals to *Rome* without the King's Licence, and appointing the Trial of criminal Clerks before ſecular Judges.

Q. What are the Statutes of *Proviſion*?

A. Statutes made in the Reigns of *Edw.* III. *Ric.* II. and *Hen.* IV. againſt *Proviſion* of Benefices and the *Proviſors* or *Procurers* thereof.

Q. What was *Proviſion* of *Benefices*?

A. An Encroachment of the Pope upon the Rights of the King and lawful Patrons, whereby he *provided* a Biſhop of a Biſhoprick, or other Perſon of an Eccleſiaſtical Living, before the Incumbent was dead.

Q. What Penalty was there upon thoſe who ſued for or purchaſed ſuch Proviſion?

A. At firſt, Impriſonment without Bail, till they ſhould make Fine to the King, and Satisfaction to the Party griev'd: Afterwards it was a *Præmunire* and perpetual Baniſhment.

Q. What is the Statute of *Præmunire*?

A. That which is commonly and eſpecially call'd the Statute of *Præmunire*, is a Statute

Statute made in 16 *Ric.* II. againſt purchaſing Bulls, or other Inſtruments, from *Rome*, or elſewhere, in Derogation of the Crown and Regalty, tho' it is incurr'd by the Tranſgreſſion of ſeveral Statutes.

Q. Why is it call'd *Præmunire?*

A. From the Words of the Writ, provided in that Caſe (*Rex vicecomiti, &c. Præmunire, vel præmonere facias præfatum* A. B. *quod ſit coram nobis*) ſignifying the Offence, and appointing the Offender a certain Day to appear and anſwer it.

Q. What is the Judgment in a *Præmunire?*

A. If, upon his Appearance and Pleading, the Iſſue be found againſt him, he ſhall be put out of the King's *Protection* (*i. e.* be diſabled to have any *Action* or Remedy by the King's *Laws*, and the King's *Writs*) forfeit all his Lands and Goods, and be impriſon'd and ranſom'd at the King's Will.

Q. What if he does not appear, or cannot be found?

A. The Statute ſays the Exigent ſhall run againſt him.

Q. What is an *Exigent?*

A. A Writ, in an Action perſonal, which goes out, when the Defendant cannot be found, nor hath any thing in the County; to the End that, after due Proclamation made, he may be out-law'd, and all his Goods and Chattels forfeited to the King, in caſe he do not appear.

Q. In

Q. In what *other* Cases is *Præmunire* incurr'd?

A. In several, which shall be taken Notice of in their proper Places: But in regard to Papal Encroachments, *Præmunire* was incurr'd by suing in a foreign Realm, or impeaching there any Judgment given in any of the King's Courts, by taking a Benefice of an Alien, or conveying Money to him for the Farm thereof; and by appealing to *Rome* from any of the King's Courts: And to defend the pretended Jurisdiction of the Pope in this Realm, is a *Præmunire* for the first Offence, and High Treason for the second.

Q. In whom was vested the Power of Dispensations, when it was taken from the Pope?

A. In the Archbishop of *Canterbury* for the Time being, only with this Limitation, that he should grant them in Matters accustom'd, and not repugnant to the Law of God. 25. *Hen.* VIII. *c.* 21.

Q. What are the customable Cases of Dispensations?

A. Many Cases were, at the Time of the original Conveyance of this Power to the Archbishop, dispensable, which have been since *fix'd* by particular Acts of Parliament, and render'd *unalterable* by Dispensation; as the Age requir'd for Institution to a Benefice, the Ages requir'd for Priests Orders, the Degrees within which Persons may, or may not marry, and several others; the Cases, that

are

are ſtill diſpenſable (ſuch as Pluralities, Unions, Commendams, Orders *extra Tempora*, and the like) ſhall be taken Notice of under their reſpective Heads.

Q. Has the Archbiſhop, by Virtue of that Act, a *Right of conferring Degrees* of all kinds?

A. Yes: For among other Heads, in which Faculties had been cuſtomarily grantable, and which were now made grantable by the Archbiſhop, by Virtue of this Act, we find in the Book of Taxation, then ordered to be ſettled, theſe two that follow;

Creatio Doctorum in quacunque Facultate. 4*l.*
Creatio aliorum Graduatorum in quacunque Facultate. 4*l.*

Which Power, as it hath not been abrogated or touched by any ſucceeding Law, ſo hath it been exerciſed by the ſucceſſive Archbiſhops, as a Right veſted in their See, by no leſs Authority than that of Parliament; to which Authority, as conveyed by this Act, ſpecial Reference is made in the Body of every Faculty that is granted upon this Head.

Q. Is it neceſſary that the Archbiſhop's Diſpenſations ſhould be confirmed by the King?

A. If the Importance of the Inſtrument was ſuch, that the Tax for the Expedition thereof at *Rome* amounted to 4*l.* or above, it muſt be confirmed under the Great Seal, and enrolled in Chancery; but no Inſtrument under 4*l.* need be confirmed, unleſs the Party deſire it.

Q. Who

Q. Who has the Power of granting Diſpenſations when the See of *Canterbury* is void?

A. The Guardians of the Spiritualties, *i. e.* the Dean and Chapter of *Canterbury*.

Q. What if the Archbiſhop refuſe to grant a Diſpenſation to any Perſon who upon a good, juſt, and reaſonable Cauſe ought to have the ſame?

A. The Lord Chancellor, upon Complaint made, ſhall enjoin him by the King's Writ to ſignify the Cauſe of Refuſal; and finding the Cauſe to be good, ſhall allow ſuch Refuſal: But if it ſhall appear to be Wilfulneſs in the Archbiſhop, the King may ſend to him an Injunction to grant it, under a Penalty at Diſcretion; and the Archbiſhop ſtill refuſing, ſhall forfeit the Sum appointed: And the King may commiſſion two other Spiritual Prelates or Perſons to do it, and it ſhall be as valid as if granted by the Archbiſhop.

Q. What if after good and due Examination the Archbiſhop finds the Cauſe to be juſt, and thereupon grants the Diſpenſation?

A. There ſhall be no Averrment or Exception by Court or Party againſt it.

TIT.

TIT. IV.

ORDERS *of Miniſters in the Church of* England, *and the Forms of* Conſecration *and* Ordination *in general.*

Q. HOW many *Orders* of Miniſters does the Church of *England* allow?

A. Three; *Biſhops*, *Prieſts*, and *Deacons*, which have been ſince the Apoſtles Times.

Q. Who is to be accounted a lawful Biſhop, Prieſt, or Deacon in the Church of *England?*

A. None but he who is called, tried, examined, and admitted thereunto, according to the *Form of Conſecration and Ordination*, or hath had formerly Epiſcopal Conſecration or Ordination. *Pref. to the Form.*

Q. Doth not the Church of *Rome* acknowledge other Orders beſides the three mentioned?

A. Yes, five more, *viz.* Subdeacons, Acolyths, Exorciſts, Readers, and Oſtiaries; which being evidently erected for Convenience only, and not being immediately concerned in the Sacred Offices of the Church, were juſtly laid aſide by our firſt Reformers.

Q. What Cenſure does the Canon inflict upon thoſe who impugn the Form of Conſecrating and Ordering Biſhops, Prieſts, and Deacons?

A. Whoever ſhall affirm that the ſaid Forms are contrary to Scripture, unlawful, or inſufficient, ſhall be Excommunicated *ipſo facto.* *Can.* 8.

Q. Was

Q. Was there not another Diviſion of the Clergy before the Reformation?

A. Yes, into Regular and Secular.

Q. What were the Regular?

A. Thoſe which liv'd under certain Rules, and were of ſome Religious Order; and were called *Men of Religion*, or, *The Religious*: Such as Abbots, Priors, Monks, *&c.*

Q. What were the Secular?

A. Thoſe who liv'd not under any certain Rules of the Religious Orders, as Archbiſhops, Biſhops, Deans, Archdeacons, Parſons, Vicars, Curates.

TIT. V.

The Manner of ELECTING *and* CONSECRATING Archbiſhops *and* Biſhops.

Q. WERE the Biſhopricks in *England* always *Elective?*

A. No; they were antiently *Donatives*, and beſtowed *per Traditionem Annuli & Baculi*, as our Books of Hiſtory and Law affirm, till about the eighth Year of *Henry* I. when they began to be Elective.

Q. Who is the Patron of them?

A. Being all of the King's Foundation, he is, in Right thereof, Patron of them all.

Q. What is the Manner of Electing them ſince the Reformation?

A. The Dean and Chapter, ſignifying to the Prince the Death of the former Biſhop, are to

to *pray Leave* to elect another. Upon this the King grants his Licence to them under the Great Seal to proceed to an Election, laying no other Reſtraints or Limitations upon the Electors but only this, *Rogantes — quod talem vobis Eligatis in Epiſcopum & Paſtorem qui Deo devotus, Nobiſq; & Regno noſtro utilis & fidelis exiſtat.* This is all the Reſtraint they are under from the Licence or *Conge d'Eſlire.* But at the ſame Time there goes along with it a *Letter miſſive*, containing the Name of the Perſon whom they ſhall elect and chuſe, by Virtue of which they are to chuſe the Perſon ſo nam'd, and no other, in due Form, within twelve Days: And in Default of that, the King may nominate, and preſent by his Letters Patent to the Metropolitan, if a Biſhop; or if an Archbiſhop, to the Metropolitan and two other Biſhops; or elſe to four other Biſhops, who ſhall conſecrate him.

Q. What follows the Election?

A. After the Perſon is elected, the Proctor conſtituted by the Dean and Chapter exhibits to him the Inſtrument of Election, and prays *quatenus eidem conſenſum & aſſenſſum ſuos præbere dignetur*; which Aſſent is to be given by an Inſtrument in Form, in the Preſence of a Notary-Publick: And after that, the King is certified of the Election made under their Seal. Upon this Certification the Perſon is ſtiled, *Lord Elect of N. N.* and doing Fealty and Homage to the King, the Election is certified under the Great Seal to the Archbiſhop,

who

who is required to *Confirm* and *Consecrate* him.

Q. What is the Method and Order of his Confirmation?

A. The Archbishop gives a Commission to his Vicar General to proceed to Confirmation, which is a long and formal Process: But the most observable Parts of it are, a Citation of all such as have any Objections against the Bishop Elect, to appear and offer them; and a Deduction of all that has past in relation to the Election, and the Royal Assent, the Particulars whereof are exhibited by the Proctor of the Dean and Chapter to the Vicar-General. After which the Oaths of Supremacy, Simony, and Canonical Obedience, are taken by the Bishop Elect; upon which Sentence is read, and subscribed by the Vicar-General, whereby the Election is ratify'd and decreed to be good.

Q. What follows Confirmation?

A. After Confirmation, the Archbishop and Bishops proceed to *Consecration*, according to the Form established; at which the personal Presence of as many Bishops of the Province as can conveniently come, is intended by the Laws of the Church, which admit of no Consecration as Canonical under the Number of Three; the Necessity of which Number is also *supposed* by our own Constitution, requiring that the elected Bishop be presented to the Archbishop by two Bishops.

Q. What is required in caſe of Tranſlation?

A. No more than Confirmation; but *that*, and all that precedes it, is required and obſerved in caſe of Tranſlations, as much as in Creations.

Q. How ſoon is the Biſhop inveſted with a Right to exerciſe ſpiritual Juriſdiction?

A. After Election and Confirmation, and not before.

Q. When do the Dignities or Benefices which a Biſhop was poſſeſſed of before his Election, become void?

A. Not till after *Conſecration* in the Caſe of a *Creation*, and after *Confirmation* in the Caſe of a *Tranſlation*; ſo that * if a *Commendam* comes before Conſecration in the firſt Caſe, and before Confirmation in the ſecond, it comes Time enough.

Q. What Privilege is that which the Archbiſhop has under the Name of *Option?*

A. Every Biſhop, whether created or tranſlated, is bound immediately after Confirmation to make a legal Conveyance to the Archbiſhop of the next Avoidance of one ſuch Dignity or Benefice belonging to his See, as the ſaid Archbiſhop ſhall chuſe or name.

Q. What if the Biſhop dies, or is tranſlated, before the preſent Incumbent of the Promotion choſen by the Archbiſhop ſhall die, or be removed?

A. It is generally ſuppoſed that the Option is void, inaſmuch as the Grantor, ſingly and by himſelf, could not convey any Right or

Title beyond the Term of his Continuance in that See.

Q. What Age is required in a Biſhop?

A. Every Man, which is to be ordained or conſecrated Biſhop, ſhall be fully Thirty Years of Age.

Q. What is the Manner of Conſecration.

A. The Act of Conſecration is thus: ¶ *The Archbiſhop and Biſhops preſent ſhall lay their Hands upon the Head of the elected Biſhop, kneeling before them upon his Knees, the Archbiſhop ſaying,*

" Receive the Holy Ghoſt for the Office and " Work of a Biſhop in the Church of God, " now committed unto thee, by the Impoſition " of our Hands, in the Name of the Father " and of the Son and of the Holy Ghoſt. *Amen.* " And remember that thou ſtir up the Grace of " God, which is given thee by this Impoſition " of our Hands; for God hath not given us the " Spirit of Fear, but of Power and Love, and " Soberneſs.

¶ *Then the Archbiſhop ſhall deliver him the Bible, ſaying,*

" Give heed unto Reading, Exhortation and " Doctrine. Think upon the Things contain'd " in this Book. Be diligent in them, that the " Increaſe coming thereby may be manifeſt unto " all Men. Take heed unto thy ſelf and to " Doctrine, and be diligent in doing them; for " by ſo doing thou ſhalt both ſave thy ſelf and " them that hear thee. Be to the Flock of Chriſt " a Shepherd, not a Wolf; feed them, devour

" them

" them not. Hold up the Weak, heal the Sick, " bind up the Broken, bring again the Outcaſts, " ſeek the loſt. Be ſo merciful that you be not " too remiſs; ſo miniſter Diſcipline that you " forget not Mercy: That when the chief " Shepherd ſhall appear, you may receive the " never fading Crown of Glory, through Jeſus " Chriſt our Lord. *Amen.*

[Vide *the Form*].

Q. Were there not formerly ſome other Ceremonies uſed in the Conſecration of a Biſhop.

A. Anciently the Bible was laid upon the Head and (according to the Rubrick 3 & 5 *Ed.* VI.) upon the Neck. By laying it on the *Head* was ſignified the Subjection of him (who was *above* all others) to the Laws of Chriſt; and by laying it on the *Neck*, the taking upon him the *Yoke* of Chriſt. At the Words *be to the Flock*, &c. according to 3 *Edw.* VI. the *Paſtoral Staff* was delivered to the Biſhop; which Delivery, in the *Roman* Pontifical, is preceded by a Conſecration of the Staff, and followed by the Conſecration and putting on of a *Ring*, in Token of his Marriage to the Church; of a *Mitre*, as the *Galea Munitionis & Salutis, quatenus decorata facie & armato capite, cornibus utriuſque teſtamenti, terribilis appareat Adverſariis veritatis*; as alſo in Imitation of the Ornaments of *Moſes* and *Aaron*: And of the *Gloves*, in Token of *clean* Hands and Heart to be preſerved by him. All which, and many other Superſtitions of the like Nature (as ſa-

vouring more of the Ceremonies of the *Jewiſh* than the Simplicity of the *Chriſtian* Religion) our reformed Church hath prudently and piouſly laid aſide, in the Conſecration of her Archbiſhops and Biſhops, retaining only ſuch outward Tokens as are moſt *antient* and moſt *grave*.

Q. What if the Dean and Chapter refuſe to Elect, or the Archbiſhop to Confirm and Conſecrate?

A. They ſhall incur a *Præmunire*.

Q. What are Temporalties of Biſhops?

A. The Temporalties are all ſuch Things as a Biſhop hath by Livery from the King, as Caſtles, Manors, Lands, and Tenements, Advowſons, Tythes, *&c.*

Q. When may the Biſhop ſue for his Temporalties?

A. After Conſecration, he ſhall be inthroniz'd or inſtall'd, and have Reſtitution of his Temporalties out of the King's Hands, and be completely Biſhop.

Q. How is the Inthronizing of the Biſhop performed?

A. By Mandate from the Archbiſhop to his own Archdeacon; but this is oftenеſt done by Proxy.

Q. What legal Privileges and Dignities belong to Archbiſhops and Biſhops?

A. They are declared PEERS OF THE LAND, 25 *Ed.* III. *Stat.* 3. *c.* 6. and are frequently ſtiled ſo in the Rolls of Parliament.

They

They are one of the THREE ESTATES of the Realm, the Lords Temporal and the Commons being the other two; as appears undeniably from the Language of Parliament in many Places, where the King is mentioned as *diſtinct* from the three Eſtates: And if the King is not one, the Biſhops of Courſe *muſt* be one. Particularly, in the Rolls of Parliament, 21 *Ric.* II. it is ſaid, That many Ordinances had been diſannulled, becauſe *the State of the Clergy were not preſent in Parliament* at the making of them; which State in a Statute 8 *Eliz. c.* 1. is called one of the GREATEST STATES of this Realm.

If their Preſence was ſo neceſſary in Parliament, how came they at any Time to be abſent?

A. In Obedience to the Canons they were obliged to withdraw, when Judgments were given in Caſes of Life and Member; upon which account they were *conſtrained*, at the Petition of the Commons, to appear by Proxy, to the End the Proceedings in Parliament might be *valid*, which, without the Preſence of thoſe who were to repreſent the State of the Clergy, either in Perſon or by Proxy, they could not be.

Q. Is there not a Diſtinction between *Eſtates in the Kingdom* and *Eſtates in Parliament*, ſo that the Biſhops may be one of the *Firſt*, and not of the *Second?*

A. This Diſtinction is meerly notional, and leaves one Eſtate unrepreſented in Parliament.

Q. What other Privileges have the Lords *Spiritual?*

A. They enjoy * the ſame legal Privileges (Trial by Peers excepted, if they have not that alſo) that the Temporal Barons do; as, in real Actions, to have a Knight return'd in their Jury, as to a Day of Grace, Hunting in the King's Foreſts, and the like: Neither may they be compelled, more than any other Lords, to anſwer * upon the Common Oath in Courts of Juſtice. * None but the King (*i. e.* none but the King's Courts of Record, as the Court of *Common Pleas*, the *King's Bench*, Juſtices of Gaol-Delivery, and the like) can write to the Biſhop to certify Baſtardy, Loyalty of Matrimony, and the like Eccleſiaſtical Matters.

Q. What Method then have the *inferior Courts* in Corporations of obtaining ſuch Certificate?

A. Only by moving the Plea into the Court of Common Pleas; upon which that Court writes to the Biſhop, and then remands the Record.

Q. Have Archbiſhops and Biſhops an Action of *Scandalum Magnatum?*

A. * Yes; by 2 *Ric.* II. *c.* v. and ſubſequent Acts.

Q. What is the Offence when a Clerk ſlayeth his Prelate?

A. * *Petit Treaſon:* Which always ſuppoſeth a *Truſt* or *Obedience* in the Offender of one kind or other.

Q. In

Q. In what Capacity do Archbiſhops and Biſhops ſit in Parliament?

A. Both in a Spiritual and Temporal Capacity.

Q. There is no Queſtion to be made as to their *Temporal* Capacity, becauſe they ſit by Succeſſion, in reſpect of their *Baronies*, Parcel of their Biſhopricks; but what Arguments are there of their *Spiritual* Capacity in Parliament?

A. Tho' their Baronies did put them more under the Power of the King, and under a *ſtricter Obligation* to attend; yet, long before *William* the Conqueror changed their Biſhopricks into *Baronies*, they were, as *Biſhops*, Members of the *Witena-gemot*, or the Great Council of the Land. And an Argument * of their *Spiritual Capacity* in Parliament is, that from the Reign of *Edward* I. to *Edward* IV. incluſive (as appears by the Records) great Numbers of Writs to attend the Parliament were ſent to the *Guardians of the Spiritualties*, during the Vacancies of Biſhopricks, or while the Biſhops were in foreign Parts. The Writs of Summons alſo preſerve the Diſtinction of *Prælati & Magnates*; and whereas Temporal Lords are to appear *in Fide & Ligeantia, quibus nobis tenemini*; in the Writs to the Biſhops, the Word *Ligeantia* is left out, and the Command to appear, is, *in Fide & Dilectione.* And laſtly, another Argument of this, is, that * a Biſhop *Confirm'd* may ſit in Parliament, as Lord thereof, that is, as ſoon as ever he is

inveſted with the *Spiritualties*, without being oblig'd to wait for his Temporalties.

Q. How do the Biſhops take Place in Parliament?

A. Firſt the Archbiſhop of *Canterbury*, next to him the Archbiſhop of *York*, then the Biſhops of *London*, *Durham*, and *Wincheſter*; all the reſt after their Antienties, *i. e. ſecundum Ordinationis ſuæ tempus.*

Q. Do Biſhops, being tranſlated, pay new Fees upon their being introduc'd into Parliament?

A. No; nor Peers rais'd to higher Dignities.

Q. What Proviſion was there for the more Convenient Attendance of the Biſhops upon Parliament?

A. The greateſt Part of the Biſhops of *England* had had *Seats*, or as they were commonly call'd, *Places*, in or near *London*, in which they were reſident during their Attendance on Parliament, on the Court, or their own proper Occaſions: And it was a great Advantage, in many Reſpects, that, during thoſe Attendances, they might freely exerciſe Juriſdiction in their reſpective *Places*, as in their own proper Dioceſes.

Q. Are there any of this Kind now remaining?

A. Only *Lambeth-Houſe* and *Croydon*, belonging to the Archbiſhop of *Canterbury*; *Wincheſter-Place*, now remov'd from *Southwark* to *Chelſea*; and *Ely-Houſe* in *Holbourn*;

the reſt being either exchang'd, or held in Leaſe of the Biſhop to whom they belong.

Q. When a Biſhop happens to be diſabled from doing his Duty thro' Infirmities either of Body or Mind, what Proviſion does the Law make to ſupply that Defect?

A. The Exerciſe of the Epiſcopal Office may be provided for by a *Suffragan*; the Juriſdiction and Temporalties put under the Management of a *Coadjutor*.

Q. What are *Suffragan Biſhops?*

A. The ſame with the antient *Chorepiſcopi*, or Biſhops of the Country, ſo called by way of Diſtinction from the proper Biſhops of the City or See; and they were common in *England*, taking their Titles from Places in *Partibus Infidelium*, or from Places in which, tho' there were fix'd Sees, and they had been ordain'd to them, they could not remain with Safety.

Q. In what manner are Suffragans provided and allow'd by the Law?

A. By a Statute 26 *Hen.* VIII. *c.* 14. which is ſtill in Force, Every Archbiſhop and Biſhop diſpoſed to have any Suffragan, ſhall name two Perſons to the King, who ſhall chooſe one, and preſent him to the Archbiſhop for Conſecration; the Archbiſhop, together with two other Biſhops provided for that Purpoſe by the Biſhop nominating or nominate, ſhall conſecrate him within three Months; and being conſecrated, he ſhall have all the Privileges of a Suffragan, but ſhall receive no *Profits*, nor exercoiſe *Juriſdiction*, but by

by the Appointment of the Biſhop under his Seal, and for ſo long Time as the Commiſſion ſhall be, upon Pain of *Præmunire*.

Q. What were the Privileges of a Suffragan?

A. They were according to the Extent of their Commiſſion, and ancient Cuſtom; and by the ſaid Statute, Reſidence as Suffragan ſhall ſerve for Reſidence upon Benefice, and every Suffragan may have two Benefices.

Q. Had Suffragans the Privilege of a Seat in Convocation?

A. Among other Branches of the Office of the ancient *Chorepiſcopi*, it is clear that *they* had a Vote and Seat in Councils. And they, who were made purſuant to this Act, are by ſome concluded to have had the ſame Privilege in an *Engliſh Convocation*; inaſmuch as among the Members of the Lower Houſe, *Anno* 1586 and 1588, we find ſome enter'd under *that Name*: But 'tis at the ſame Time obſervable, that they had *other* Capacities intitling them to ſit there; ſo that, tho' the Style of *Suffragan* is added in the Entry, it appears not that they really ſat in any other Capacity than as *Dignitaries* of the Church.

Q. How long have Suffragans been diſus'd?

A. One of the laſt Suffragan Biſhops, if not the laſt, upon the Foot of this Act, was Dr. *Stern*, Suffragan Biſhop of *Colcheſter*; who was ſuſpended for not appearing, as we

we are told in the Abſtract from the Journal of Convocation in the Year 1606.

Q. What Towns are appointed to be the Sees of Suffragans?

A. Thetford, Ipſwich, Colcheſter, Dover, Guildford, Southampton, Taunton, Shaftsbury, Molton, Marlborough, Bedford, Leiceſter, Glouceſter, Shrewsbury, Briſtol, Penreth, Bridgwater, Nottingham, Grantham, Hull, Huntingdon, Cambridge, Pereth, Berwick, St. Germains in *Cornwall*, and alſo the *Iſle of Wight.*

Q. Was the King oblig'd to give the Suffragans a Title within the Dioceſe they were to officiate in?

A. Generally ſpeaking the Titles were ſo given; but the King was left at Liberty to give them from any of the Places mention'd.

Q. Were the Suffragans made in Virtue of this Act of the Order of Biſhops?

A. Undoubtedly, becauſe the Act itſelf provides for their Canonical Conſecration.

Q. What was their Buſineſs?

A. To diſcharge all Offices merely Epiſcopal, yet confin'd to the Exerciſe of ſuch Powers only, as they had Commiſſion for from Time to Time, ſuppoſing the Biſhop not wholly diſabled.

Q. What was a Coadjutor?

A. A Perſon appointed by the Archbiſhop, where the Biſhop was diſabled, to take Care of the *Voluntary Juriſdiction*, as the mere *Spiritual*

Spiritual Purpoſes of the Dioceſe were provided for by a *Suffragan*.

Q. What were the Powers generally given to Coadjutors in their Commiſſion?

A. To collate, inſtitute, and grant *Commendas Canonicas in ſuis caſibus, i. e.* Diſpenſations to hold a ſecond Benefice, for a Time, without Inſtitution; the granting of which was in the Power of the Biſhops, and they in Fact frequently granted it.

Q. Are there any Rules for the Appointment of Coadjutors?

A. There are many in the *Canon Law*, but the Uſe of them has been long laid aſide.

TIT. VI.

The ORDINATION *of* PRIESTS *and* DEACONS.

Q. WHAT is proper to be conſider'd under the Head of *Ordination?*

A. The *Neceſſity* of Ordination itſelf, the *Time*, *Place*, and *Manner* of *Ordaining*; the *Titles*, *Age*, *Abilities*, and other *Qualifications* of Perſons to be ordain'd, their *Oaths* and *Subſcriptions*; together with the ſpecial Cauſes of *Suſpenſion* from the Exerciſe of Orders receiv'd.

Q. What does the Church of *England* hold as to the Neceſſity of Ordination?

A. That

A. That it is not lawful for any Man to take upon him the Office of publick Preaching, or miniſtring the Sacraments in the Congregation, before he be lawfully call'd, and ſent to execute the ſame. *Art.* 39.

Q. Whom ought we to judge lawfully call'd and ſent?

A. Thoſe which be choſen and call'd to this Work by Men who have publick Authority given unto them in the Congregation, to call and ſend Miniſters into the Lord's Vineyard. *Ibid.*

Q. What are the Times appointed for Ordination?

A. The Times appointed in the Canon are the *Jejunia quatuor Temporum*, or *Ember Weeks*, which became the ſettled Times of Ordination about the fourth or fifth Century; but upon urgent Occaſion, with the Licence or Diſpenſation of the Archbiſhop, the Biſhops may be authoriz'd to give Orders *extra tempora præſcripta.*

Q. In what *Place* is the Biſhop to ordain?

A. In the Face of the Church, i. e. before the publick Congregation. *Pref. to the Forms.*

Q. What *Title* is neceſſary for ſuch as are to be ordain'd?

A. None ſhall be admitted into ſacred Orders, unleſs he ſhall exhibit to the Biſhop a Preſentation of himſelf to ſome Eccleſiaſtical Preferment then void, in that Dioceſe; or ſhall bring a true and undoubted Certificate that he is provided of ſome Church within the

the ſaid Dioceſe, where he may attend the Cure of Souls, or of ſome Miniſter's Place vacant, either in the Cathedral Church of that Dioceſe, or in ſome other Collegiate Church, therein alſo ſituate, where he may execute his Miniſtry: Or that he is Fellow, or in Right as a Fellow, or to be a Conduct or Chaplain in ſome College in *Cambridge* or *Oxford*; or except he be a Maſter of Arts of five Years ſtanding that liveth of his own Charge in either of the Univerſities; or except, by the Biſhop himſelf that doth ordain him, he be ſhortly after to be admitted either to ſome Benefice or Curateſhip then void. *Can.* 33.

Q. What if the Biſhop ordain without a Title?

A. He ſhall *keep* and *maintain* the Perſon whom he ſo ordains, with all Things neceſſary, till he prefer him to ſome Eccleſiaſtical Living, upon Pain of Suſpenſion from giving Orders by the Space of a Year. *Ibid.*

Q. Are Perſons giving Titles to *Temporary Cures* under the like Obligation?

A. * The ſame may be, and has been requir'd, of the Perſon *entitling*, in caſe the Clerk (ordain'd upon ſuch Title) ſhould at any Time want convenient Maintenance.

Q. Can a Biſhop ordain one of another Dioceſe?

A. Not without *Letters Dimiſſory* from the Biſhop of whoſe Dioceſe he is, upon Pain of Suſpenſion from giving Orders for two Years;

except he be of † one of the Univerſities; for ſuch are *ſufficienter Dimiſſi*, and may be ordain'd by what Biſhops they pleaſe.

Q. Can the Archbiſhop, as *Metropolitan*, grant Letters Dimiſſory?

A. No, except in the Time of his Metropolitical Viſitation of any Dioceſes; during which he may both grant Letters Dimiſſory, and ordain the Clergy of the Dioceſe viſited.

Q. Who has the Right of granting Letters Dimiſſory during the Vacancy of a See?

A. The Guardian of the Spiritualties, and in conſequence the Right of Ordaining too, where ſuch Guardian is of the Epiſcopal Order.

Q. Who has it when the Biſhop is in Parts *remote*?

A. He who is Vicar-General for that Time.

Q. To whom may Letters Dimiſſory be granted?

A. To ſuch Perſons as were either *born* in the Dioceſe, or are *promoted* in it, or are *reſident* in it. Tho' Letters Dimiſſory in any of theſe Caſes are good, the common Practice *now* is, to have them from the Biſhop in whoſe Dioceſe the Title lies.

Q. Ought the *Fitneſs* of the Perſon to be ordain'd (as to Life, Learning, Title, *&c.*) to appear, *before* the granting of Letters Dimiſſory?

A. * Yes: This has been the ancient Practice. Vide *Appendix* N. 7. §. 6.

Q. May

† That is, a Member of ſome College, ſo as that he may be ordain'd, *ad Titulum Collegii ſui.*

Q. May Letters Dimiſſory be granted at once, *ad omnes Ordines ?*

A. Yes, and directed, *Cuicunque Epiſcopo Catholico*, at large.

Q. What is the *Age* requir'd for Prieſts and Deacons ?

A. Deacons ſhall be twenty-three Years of Age, unleſs diſpens'd with, and Prieſts ſhall be twenty-four complete, and no Diſpenſation is allow'd.

Q. What *Abilities* and *Qualifications* are requir'd in Perſons to be ordained ?

A. By the 36th Canon no Perſon ſhall be ordained except he hath taken ſome *Degree* of School in either of the Univerſities, or at the leaſt, except he be able to yield an Account of his Faith in *Latin*, according to the XXXIX Articles, and to confirm the ſame by ſufficient Teſtimonies out of the Holy Scriptures: And except moreover he ſhall then exhibit Letters Teſtimonial, of his good Life and Converſation, (and, by 13 *Eliz. c.* 2. of his profeſſing the Doctrine expreſs'd in the ſaid Articles,) under the Seal of ſome College of *Cambridge* or *Oxford*, where before he remain'd, or of three or four grave Miniſters, together with the Subſcription and Teſtimony of other credible Perſons, who have known his Life and Behaviour by the Space of three Years next before.

Q. What is requir'd by our Canons with regard to the Examination of ſuch as are to be made Miniſters ?

A. The

A. The Biſhop, before he admit any Perſon to Holy Orders, ſhall diligently examine him in the Preſence of thoſe Miniſters that ſhall aſſiſt him in the Impoſition of Hands; and if the ſaid Biſhop have any lawful Impediment, he ſhall cauſe the ſaid Miniſters carefully to examine every ſuch Perſon ſo to be order'd. Provided that they, who ſhall aſſiſt the Biſhop in examining and laying on of Hands, ſhall be of the Cathedral Church, if they may conveniently be had, or other ſufficient Preachers of the ſame Dioceſe, to the Number of three at leaſt. *Can.* 35.

Q. What is the regular *Method* of Examination?

A. According to a Canon upon that Head, inſerted in the Body of the Canon Law, the Candidates for Ordination are to be examin'd for three Days together before the Ordination *Sunday*, in the Preſence of the Biſhop and his Aſſiſtants, as to their *Age*, *Title*, *Morals*, *Learning*, &c. Vide *Appendix* N°. 7. § 1. 3.

Q. Does not this Examination of *common Right* belong to the *Archdeacon*?

A. It does: And this is alſo ſuppos'd in our own Form of Ordination, both of Prieſts and Deacons, where the *Archdeacon's* Office is to preſent the Perſons as apt and meet; but in his Abſence the Biſhop may examine by himſelf, if he thinks fit, or appoint others who attend upon him to do it.

Q. What are the *Oaths* and *Subſcriptions* requir'd of Perſons to be ordain'd?

A. They are to ſubſcribe to the 39 Articles, the three Articles contain'd in the 36th Canon, and take the Oath of Supremacy.

Q. What are thoſe three Articles?

A. 1. That the King's Majeſty, under God, is the only ſupreme Governor of this Realm, and all other his Highneſs's Dominions and Countries, as well in all Spiritual or Eccleſiaſtical Things or Cauſes, as Temporal; and that no foreign Prince, Perſon, Prelate, State or Potentate, hath or ought to have any Juriſdiction, Power, Superiority, Pre-eminence, or Authority, Eccleſiaſtical or Spiritual, within his Majeſty's ſaid Realms, Dominions and Countries.

2. That the Book of Common-Prayer, and of ordering of Biſhops, Prieſts, and Deacons, containeth in it nothing contrary to the Word of God, and that it may lawfully ſo be uſed; and that he himſelf will uſe the Form in the ſaid Book preſcrib'd in publick Prayer and Adminiſtration of the Sacraments, and none other.

3. That he alloweth the Book of Articles of Religion agreed upon by the Archbiſhops and Biſhops of both Provinces, and the whole Clergy in the Convocation holden at *London* in the Year of our Lord God One Thouſand Five Hundred Sixty and Two: And that he acknowledgeth all and every the Articles therein contained, being in Number Nine and Thirty, beſides the Ratification, to be agreeable to the Word of God.

Q. What

Q. What is the Form of Subſcribing?

A. "I *N. N.* do willingly, *& ex animo*, "ſubſcribe to theſe Articles above-mention'd, "and to all Things that are contain'd in "them.

Q. What is the Oath of Supremacy?

A. "I *A. B.* do ſwear, that I do from my "Heart abhor, deteſt, and abjure, as impious "and heretical, that damnable Doctrine and "Poſition, that Princes excommunicated or "deprived by the Pope, or any Authority of "the See of *Rome*, may be depoſed or mur-"dered by their Subjects, or any other whom-"ſoever.

"And I do declare, that no foreign Prince, "Perſon, Prelate, State or Potentate, hath or "ought to have any Juriſdiction, Power, Su-"periority, Pre-eminence, or Authority, Ec-"cleſiaſtical or Spiritual, within this Realm. "So help me God.

Q. What is the Manner of Ordaining *Deacons*?

A. The *Act* of Ordination is thus: *The Biſhop laying his Hands ſeverally upon the Head of every one of them, humbly kneeling before him, ſhall ſay,*

"Take thou Authority to execute the Of-"fice of a Deacon in the Church of God, "committed unto thee in the Name of the "Father, and of the Son, and of the Holy "Ghoſt. *Amen.*

¶ *Then shall the Bishop deliver to every one of them the New Testament, saying,*

" Take thou Authority to read the Gospel " in the Church of God, and to preach the " same, if thou be thereto licens'd by the Bi- " shop himself. *Vide* the Form.

Q. What is the Office of a Deacon?

A. To assist the Priest when he ministreth the Holy Communion, and to help him in the Distribution thereof, and to read Holy Scriptures and Homilies in the Church; to catechise, to baptize in the Absence of the Priest, and to preach, if he be thereto admitted by the Bishop.

Q. Is it not a Part of his Office also to search for the Sick, Poor, and Impotent of the Parish, in order to their Relief?

A. This is the most ancient Duty of a Deacon, and the immediate Cause of the Institution of the Order; and 'tis declar'd to be their Office in the Form of Ordination: But then 'tis to be observ'd, that this Rule was made in *England*, while the Poor subsisted wholly by *Voluntary Charities*, and before the Settlement of *Rates*, or other fix'd and certain Provisions; pursuant to which Settlements, our Laws have devolv'd that Care upon the Churchwardens and Overseers of the Poor, which last Office was created on purpose for that End.

Q. How long shall a Deacon continue in that Office?

A. A whole Year, unless dispens'd with by the Bishop: But tho' he may be made a Priest

within the Year, yet no Perſon whatever ſhall be made Prieſt and Deacon in one Day. *Can.* 32.

Q. What Penalty is there upon a Deacon's preſuming to conſecrate and adminiſter the holy Sacrament of the Lord's-Supper?

A. He ſhall forfeit for every Offence the Sum of One hundred Pounds, and be diſabled from being admitted to the Order of Prieſthood for a Year. 13 & 14 *Car.* II. *c.* 4.

Q. What is the Manner of Ordaining Prieſts?

A. The *Act* of Ordination is thus: *The Biſhop, with the Prieſts preſent, ſhall lay their Hands ſeverally upon the Head of every one of them, humbly kneeling upon their Knees, and the Biſhop ſaying,* "Receive the Holy Ghoſt, for "the Office and Work of a Prieſt in the Church "of God, now committed unto thee by the Im- "poſition of our Hands: Whoſe Sins thou doſt "forgive, they are forgiven; and whoſe Sins "thou doſt retain, they are retained: And be thou "a faithful Diſpenſer of the Word of God, and of "his Holy Sacraments; in the Name of the Father, "and of the Son, and of the Holy-Ghoſt. *Amen.*

¶ *Then the Biſhop ſhall deliver to every one of them, kneeling, the Bible into his Hand, ſaying,*

"Take thou Authority to preach the Word of "God, and to miniſter the Holy Sacraments in "the Congregation, where thou ſhalt be law- "fully appointed thereunto. *Vide* the Form.

Q. Does Ordination give the Priest Authority to preach without Licence?

A. No: He may not preach without Licence, either of the King, or his respective Archbishop, Bishop, or other Ordinary, or one of the Universities of *Cambridge* or *Oxford*, in any Church or Chapel of which he hath not the Care.

Q. Is there any *Fee* due for Ordination?

A. No Fee or Money shall be received either by the Archbishop, or any Bishop or Suffragan, either directly or indirectly, for admitting of any into Sacred Orders; Nor shall any other Person or Persons under them receive for Parchment, Writing, Wax, Sealing, or any other Respect thereunto appertaining, above ten Shillings, under Penalty of the Law. *Can.* 35.

Q. What Penalty is there upon *Simoniacal* Ordination?

A. By 31 *Eliz. c.* 6. If any Person shall, directly or indirectly, take any Reward, or Promise of it, to himself or Friends, for or to procure the Ordaining of any Minister, all ordinary or lawful Fees only excepted, he shall forfeit 40 *l.* for every such Offence, and the Party ordained 10 *l.* And if he shall take any Benefice or Ecclesiastical Promotion within seven Years after such corrupt receiving of Orders, it shall be void, and the Patron may present again.

Q. What are the ſpecial Cauſes of Suſpenſion from the Exerciſe of Orders received?

A. Perſons * illegitimate, who are ordained without Diſpenſation; Perſons ordained by other Biſhops, without a Licence of their own Biſhop; Perſons guilty of mortal Sin, or taking Orders for Lucre; and all *Irregulars* before or after Orders, ſhall be ſuſpended from the Execution of them.

Q. Who are Irregulars?

A. Irregularity is a Canonical Impediment, ariſing from ſome infamous Crime, or Defect of Body or Mind, to take Orders; or if already in Orders, to miniſter in the ſame: Thoſe who are under this Impediment, are called *Irregulars*; ſuch are *Homicides*, *Simoniacks*, Advocates in the Cauſe of Blood, *Bigami*, and ſeveral others by the antient Conſtitutions: But this Cenſure is now out of Uſe.

TIT. VII.

The Converſation *and* Apparel *of* Miniſters.

Q. WHAT Reſtraints are the Clergy under with regard to *Secular* Employments?

A. By the 75th Canon they are forbid to give themſelves to any baſe or ſervile Labour: And by 2 *Hen.* VIII. *c.* 13. 'tis enacted, That no Spiritual Perſons ſhall take Lands to Farm, upon pain to forfeit ten Pounds for every

Month he occupies them (excepting the Temporalties of Biſhopricks, during the Vacation;) nor buy and ſell in the way of Merchandize, upon Pain to forfeit the treble Value, and the Bargain to be void.

Q. What if a Clergyman has not ſufficient Glebe for the Expences of his Houſe and Hoſpitality?

A. He is in that Caſe allow'd to take ſuch *Ferm* as is ſufficient, and to buy and ſell Corn and Cattel, *&c.* for the Management of it, provided he ſells nothing but the Overplus without Fraud: * And this Plea of the Glebe not being ſufficient, hath been pleaded and allowed, as oft' as any Action hath been brought upon this Statute.

Q. What Obligations are they under with regard to Life and Manners?

A. They are bound by the Promiſe made by them at their Ordination, to frame and faſhion themſelves and Families, according to the Doctrine of Chriſt, and to make both themſelves and them (as much as in them lieth) wholſome Examples of the Flock of Chriſt; particularly to maintain and ſet forward (as much as lieth in them) Quietneſs, Peace, and Love among all Chriſtian People, and eſpecially among them that are commited to their Charge.

Q. How is this Engagement further enforced by the Canon?

A. * No Eccleſiaſtical Perſon ſhall at any Time, other than for their honeſt Neceſſities, reſort

reſort to any Taverns or Alehouſes; neither ſhall they Board or Lodge in any ſuch Places, nor give themſelves to Drinking, or Riot, ſpending their Time idly, by Day or by Night, playing at Dice, Cards, or Tables, or any other unlawful Game: But they ſhall, at all Times convenient, hear or read ſomewhat of the holy Scriptures, or ſhall occupy themſelves with ſome other honeſt Study or Exerciſe; always doing the Things which ſhall appertain to Honeſty, and endeavouring to profit the Church of God, having always in Mind, that they ought to excel all others in Purity of Life, and ſhould be Examples to the People to live well and Chriſtianly, under pain of Eccleſiaſtical Cenſures to be inflicted with Severity, according to the Quality of their Offences. *Can.* 75.

Q. What if a Deacon relinquiſh the Miniſtry, and afterwards uſe himſelf in the Courſe of his Life as a Layman ----?

A. The Churchwardens ſhall preſent him, and he ſhall be Excommunicated.

Q. What is the Reaſon why all Churches have ever appointed the Clergy a diſtinct Habit?

A. The true, ancient, and flouriſhing Churches of Chriſt, being ever deſirous that their Prelacy and Clergy might be had as well in outward Reverence, as otherwiſe regarded for the Worthineſs of their Miniſtry, did think it fit, *by a preſcript Form of decent and comely Apparel*, to have them known to the People, and thereby to receive the Honour and Eſti-

mation

mation due to the Special Messengers and Ministers of Almighty God.

Q. What does the Church of *England* enjoin in this Respect?

A. In Conformity to the ancient Custom, and for the keeping up of Decency, Gravity, and Order, there is a Canon specially provided, enjoining them to use their proper Clerical Habit when they appear *Abroad*; tho' they may use any comely or Scholar-like Apparel in *private Houses*, and in their *Studies*. *Can.* 74.

TIT. VIII.

Cathedral and Collegiate CHURCHES *of the old and new Foundation.*

Q. WHAT is a Cathedral Church?

A. A Cathedral Church is properly the *See* of a Bishop.

Q. Where ought the Sees of Bishops regularly to be fix'd?

A. In such Towns only as are Noted and Populous.

Q. What are the Privileges of a Cathedral?

A. 1. Every Town which hath the See of a Bishop placed in it, is thereby intitled to the Honour of a *City*.

2. Every See or Cathedral (as such) is exempt from *Archidiaconal Jurisdiction*.

3. The

3. The Cathedral-Church is the *Pariſh-Church* of the whole *Dioceſe*; and reſorting to it, to hear Divine Service, * hath been affirmed, with great Probability, to be a Reſorting to the Pariſh-Church, within the natural Senſe and Meaning of the Statute.

4. In Honour of the Cathedral-Church, and in Token of Subjection to it, as the Biſhop's See, every Parochial Miniſter within the Dioceſe pays to the Biſhop an annual Penſion, call'd antiently *Cathedraticum.*

Q. Under what Name is it *now* paid?

A. Under the Name of *Synodaticum*, becauſe generally paid at the Biſhops *Synod* at *Eaſter.*

Q. To whom belong the Ornaments of a Chapel of a preceding Biſhop at his Death?

A. * Not to the Executors of the Deceaſed, but to the See or ſucceeding Biſhop?

Q. What *Reſidence* is a *Dean* oblig'd to in his Cathedral Church?

A. Every Dean, Maſter, or Warden, or Chief Governor of any Cathedral or Collegiate Church, ſhall be Reſident in his ſaid Church Ninety Days *Conjunctim* or *Diviſim* in every Year at leaſt; except he be lawfully hindred by urgent Cauſes, to be approv'd by the Biſhop, or in any other lawful Sort diſpens'd with. *Can.* 42.

Q. What is the Difference between a *Cathedral* and a *Collegiate* Church?

A. The Diſtinction between theſe, as well as the ancient *Conventual* Churches, may beſt be gather'd

ther'd from the Deſcription given by *Lyndwood* of the ſeveral Names, *Proprie loquendo*, Capitulum *dicitur reſpectu Eccleſiæ* Cathedralis; Conventus *reſpectu Eccleſiæ* Regularis; Collegium, *reſpectu Eccleſiæ inferioris, ubi eſt* Collectio *viventium in communi.*

Q. What Reſidence are *Prebendaries* bound to by the Canon?

A. Such as are Reſidentaries ſhall divide the Year among them, ſo as that ſome of them ſhall be always Perſonally Reſident; and when their Reſidence is over, ſhall repair to their Benefices, from which Prebendaries at large ſhall not be abſent above a Month in the Year, unleſs for urgent Cauſe, and certain Time, to be allow'd by the Biſhop. *Can.* 44.

Q. What Difference is there between a *Canonry* and a *Prebend?*

A. The firſt is a Name of *Office*, the Second only of *Maintenance:* And they are thus diſtinguiſh'd by *Lyndwood*; CANONIA *eſt Jus Spirituale quod aliquis aſſequitur in Eccleſia per receptionem in fratrem, & aſſignationem Stalli in Choro & Loci in Capitulo:* PRÆBENDA *vero eſt jus Spirituale recipiendi certos proventus pro meritis in Eccleſia competentes percipienti ex divino Officio cui inſiſtit; & naſcitur ex Canonia, tanquam filia a Matre.*

Q. What is a *Dean?*

A. An Eccleſiaſtical Secular Governor next under the Biſhop, and Head of the Chapter.

Q. Why is he called *Decanus* or *Dean?*

A. The

A. The ancient Name was *Archi-Presbyter*, or Head Presbyter of the College of Presbyters, who being *ten* in Number, gave Occaſion from thence to the Name *Decanus*.

Q. Is a *Deanry* a *Temporal* Promotion, or may it be held, as ſuch, by a *Layman*?

A. A *Deanry* is a Promotion merely *Spiritual*, and might never be poſſeſs'd *regularly* by any Perſon but who was of the Order of *Prieſthood*, as is plain from the ancient Name juſt mentioned.

Q. Is the Title of *Dean* a Title of Dignity?

A. Yes, as coming within all the three Qualifications of a Dignity laid down by *Lyndwood*.

Q. What are the Qualifications which he lays down?

A. Dignitas (ſays he) *Cognoſcitur*, 1. *Ex adminiſtratione rerum Eccleſiaſticarum cum Juriſdictione.* 2. *Ex nomine & prælatione quam habet in Choro & Capitulo.* 3. *Ex Conſuetudine loci.* By which Rules, no Stations in the Cathedral Church, under the Biſhop, are *Dignities*, ſtrictly ſpeaking, beſides the *Dean* and *Archdeacon*, unleſs where *Juriſdiction* is annexed to any of the reſt, as in ſome Caſes it is to Prebends, *&c.*

Q. What Difference is there between Deans of the *Old* and *New* Foundation, with regard to their Admiſſion to their reſpective Dignities?

A. Thoſe of the *Old* Foundation come in by Election of the Chapter, upon the King's *Conge dElire*, with the Royal Aſſent, and Confir-

Confirmation of the Bishop, much in the same Way as the Bishops themselves do; those of the *New* come in by the King's *Letters Patents*, upon which they are *instituted* by their respective Bishops, and then installed upon a Mandate, pursuant to such Institution, and directed to the Chapters.

Q. What do you call Deanries of the *New* Foundation?

A. Those which were either newly erected by King *Hen.* VIII. or changed by him from Abbots and Convents, or Priors and Convents, into Deans and Chapters.

Q. By what Authority did he do this?

A. By Virtue of an Act of Parliament, enabling him to erect new Bishoprieks, Cathedral and Collegiate Churches, and to apply the Revenues of the Dissolved Monasteries for their Endowment, and to devise Statutes, &c. for their Regulation and Government; and all this by his Letters Patents under the Great Seal, in which, whatever was comprised and expressed, should be as valid and binding as if done by Authority of Parliament.

Q. What are the Names of those which were erected in pursuance of this Act?

A. Besides those which were erected out of the Dissolved Monasteries, *viz. Canterbury*, *Winchester*, *Worcester*, *Ely*, *Carlisle*, *Durham*, *Rochester*, and *Norwich*, he erected *de Novo* five other Cathedral Bodies, *viz. Chester*, *Peterborough*, *Oxford*, *Glouceſter*, and *Bristol*, which he made Episcopal Sees, as also *West-*

minster;

Winsher; but the Bishoprick of this last Place was sunk, and the Monastery turn'd into a Collegiate Church by Queen *Elizabeth*.

Q. What was done with relation to the Statutes which the King was impowered to give the Cathedral Bodies he had erected?

A. Statutes were drawn up and delivered to them, but not having been *indented* as the Act required, Doubts arose concerning the Validity of them, and therefore the same Power which had been granted to King *Henry* VIII. was afterwards granted to Queen *Mary*; and after that, to Queen *Elizabeth*. And pursuant to the Powers vested in her by the Act in that Behalf, there seems to have been a Confirmation presently made of the Statutes of King *Henry* VIII. for a Rule to the several Churches, until they could be Review'd and Reform'd. Afterwards New Statutes were prepared by the Archbishop and others (Special Powers for that End having been inserted in the Body of the Ecclesiastical Commission) and finish'd in the Month of *July* 1572, and the several Bodies were ready for the *Royal Confirmation*; but this, (for what Reason, or by what Accident, appears not) was never obtain'd. Nothing farther seems to have been done in this Matter till *6 Ann.* c. 21. when it was enacted, to prevent the Inconveniencies and Mischiefs which might arise from Doubts and Disputes concerning the Validity of the said Statutes, (occasion'd by the Statutes 1 *Mar.* c. 9.

c. 9. and by the Loſs of Records in the Civil Wars) that ſuch Statutes as had been uſually practis'd, and ſworn to *ſince the Reſtoration*, ſhould be the Statutes of the reſpective Churches, ſo far as they were conſiſtent with the Conſtitution of the Church of *England*, and the Laws of the Land; reſerving nevertheleſs to the Queen a Power, during her Life, to alter them, and to reſume or ſettle the local Viſitation of the ſaid Churches in ſuch manner, from Time to Time, as to her Majeſty ſhould ſeem meet.

Q. Does the Surrender of the Lands and Poſſeſſions of a Dean and Chapter diſſolve the Corporation?

A. * No: Becauſe the Ends for which they were inſtituted may be anſwered, tho' they had no Temporal Poſſeſſions.

Q. For what Ends were Deans and Chapters inſtituted?

A. To adviſe the Biſhop in Spiritualties, and reſtrain him in Temporalties.

Q. If the Manor of a Prebend be recover'd by Title *Paramount*, does the Perſon ſtill remain a Prebendary of the Church?

A. Yes: Becauſe he hath *Stallum in Choro & Vocem in Capitulo.*

Q. Is a Chapter of itſelf capable to take by Purchaſe or Gift?

A. * Not without the Dean, who is the Head of it.

Q. What

Q. What Statute is there againſt Abuſes in the Election to vacant Dignities?

A. By 31 *Eliz. c.* 6. 'tis enacted, That if any Perſon or Perſons, Bodies politick or corporate, ſhall take any Money, Fee, Reward, or any other Profit, directly or indirectly, either to him or themſelves, or any other of their or any of their Friends, for his or their Voices, or Aſſent, in electing any Officer, Fellow, or Scholar into any College, Cathedral or Collegiate Church, School, Hoſpital, Hall, or other like Society, the Place ſhall be void, and may immediately be diſpoſed of to another: And any Perſon receiving Money, or other Profit, directly or indirectly, to *Reſign*, ſhall forfeit double the Sum; and the Perſon giving the Money ſhall be uncapable of the Place, and another may be preferred to it: And this Act, and the local Statutes concerning Election, ſhall be read before every Election, upon pain of 40*l.* Forfeiture from every Perſon in whom Default thereof ſhall be; one Half to him that ſhall ſue for the ſame, the other to the Uſe of the Society or Place where ſuch Offence ſhall be committed.

Q. What Rules are to be obſerved concerning *Habits* in Cathedral and Collegiate Churches, *&c?*

A. In the Time of Divine Service and Prayers in all Cathedral and Collegiate Churches, when there is no Communion, it ſhall be ſufficient to wear Surplices, ſaving that all Deans, Maſters and Heads of Collegiate Churches, Canons,

and Prebendaries, being Graduates, ſhall daily, at the Times both of Prayer and Preaching, wear with their Surplices ſuch Hoods as are agreeable to their Degrees: The like is requir'd of all Maſters and Fellows of Colleges or Halls, and all the Scholars and Students in either of the Univerſities, at the Time of Divine Service, upon all *Sundays*, *Holy-days*, and their *Eves*. *Can.* 25, 17.

Q. What Habit is requir'd in Cathedrals when there is a Communion?

A. The principal Miniſter ſhall uſe a decent *Cope*, being aſſiſted with the Goſpeller and Epiſtler agreeably. *Can.* 24.

Q. Who is to adminiſter the holy Communion in all Cathedral and Collegiate Churches upon the principal Feaſt-Days?

A. It ſhall be adminiſtred ſometimes by the Biſhop, if he be preſent, and ſometimes by the Dean, and ſometimes by a Canon or Prebendary. *Ibid.*

Q. What *Preaching* is required of Deans and Prebendaries?

A. They ſhall not only preach in their Cathedrals, according to Statute, but in other Churches of the ſame Dioceſe where they are reſident, and eſpecially in thoſe Places whence they, or their Church, receive any yearly Rents or Profits. *Can.* 43.

Q. May Strangers preach in Cathedral Churches?

A. No Stranger ſhall preach in Cathedral Churches, except he is a licenced Preacher;

and if any preach falſe Doctrine, he ſhall be certified to the Biſhop by the Dean, or the Reſidents who heard him, as ſoon as may be. *Can.* 51.

Q. Are Lecturers, being choſen in a Cathedral or Collegiate Church, obliged to read the Common Prayer?

A. It ſhall be ſufficient openly to declare their Aſſent. 13 *Car.* II. *c.* 4.

TIT. IX.

Parochial CHURCHES *and* CHAPELS, *with the proper* OFFICERS *thereunto belonging.*

Q. WHAT was the Original of *Parochial* Churches?

A. At firſt there was only one Church in each Dioceſe, *viz.* at the Place where the Biſhop with his Clergy reſided and performed all Divine Offices, as at *London*, *Canterbury*, *&c.* from whence, as Neceſſity required, Prieſts were ſent out to preach and baptize in the remoter Parts of the Dioceſe; but the *Saxon Thanes*, or Noblemen, did very early begin to erect leſſer Churches for their own Convenience, which yet were not to be made Uſe of, till conſecrated by the Biſhop; and it was many Ages before the Parochial Diviſion of Dioceſes was effected.

Q. When did that Work firſt begin?

A. It cannot be preciſely determin'd when it firſt began, or when it came to a Settlement: But it appears to have been ſo far advanced in King *Edward the Confeſſor*'s Reign, that in his Laws 'tis complained of, that in ſome Places there were three or four Churches, where there had been but one, by which Means the Maintenance of the *officiating* Prieſt was much leſſened, eſpecially becauſe the Clergy, being rich while their Pariſhes were ſo large, *would not be at the Trouble of proſecuting their Rights*: Which, by being neglected, were in great Meaſure loſt.

Q. May a Church be erected without the *Leave* and *Conſent* of the Biſhop?

A. No: The Neceſſity of the Biſhop's Conſent and Licence was made an expreſs Law of the Church of *England*, in the Council of *Weſtminſter*, and that in Conformity to the Rules both of the Civil and Canon Law long before.

Q. May a Church be Conſecrated, after it is erected, before it is Endow'd?

A. No: In Strictneſs, by the Canon Law, the Endowment ſhould be not only made *before Conſecration*, but even aſcertained and exhibited; nay, by the Civil Law actually made *before the Building be begun.*

Q. Is there any Form of Conſecrating of Churches, *&c.* provided in the Church of *England*?

A. A Form of Conſecrating Churches, and Chapels, and Church-Yards or Places of Burial,

rial, was ſent down from the Biſhops to the Lower Houſe of Convocation, *April* 2, 1712, and altered by the Committee of the whole Houſe, and reported to the Houſe *April* 9, 1712, and agreed to with ſome Alterations: By this Form, which has been generally obſerved, *Divine Service* is to be performed at the Conſecration of every Church; and the Conſecration may be performed indifferently *on any Day*, according to ancient Uſage.

Q. In the Conſecration of a *new Church*, what Regard is to be had to Churches already Conſecrated?

A. A Proviſion is to be made, that no Damage accrue to *any other Church* in Point of Rights or Revenues.

Q. May a Church once Conſecrated be Conſecrated again?

A. No: Except in caſe of Pollution by Effuſion of Blood, in which Caſe the *Canon* ſuppoſes a *Re-conſecration*; tho' the common Method in *England* was a *Reconciliation* only, as appears by innumerable Inſtances in our Eccleſiaſtical Records: In point of *Ruin, and Decay*, a Reconciliation is ſufficient, unleſs where a Church or Chapel is wholly *new built*.

Q. Does the Law take any *Notice* of Churches or Chapels till they are *Conſecrated* by the Biſhop?

A. * No: And this is the Reaſon why a *Church or not a Church, a Chapel or not a Chapel* ſhall be certified by the *Biſhop*.

Q. May Divine Service be performed, and the Sacraments adminiſter'd in Churches and Chapels not conſecrated?

A. The Canon Law *ſuppoſes* this may be done with the Conſent of the Biſhop, inaſmuch as it provides, that a Church ſhall have the Privilege of Immunity, *in qua Divina Myſteria celebrantur, licet adhuc non extiterit Conſecrata*; and there are many Licences to that Effect (granted on ſpecial Occaſions) in our Eccleſiaſtical Records.

Q. Is any thing due to the Biſhop who conſecrates a Church, from the Perſon or Perſons praying ſuch Conſecration?

A. Yes; a *reaſonable Procuration*, (not for the Conſecration, but for the neceſſary Refreſhment of the Biſhop and his Servants) the Meaſure and Proportion of which muſt be determin'd by the Uſage of every Dioceſe.

Q. What Care is taken by the Law to keep conſecrated Places from Violation and Profanation?

A. By 13 *Ed.* I. *Stat.* 2. *c.* 6. No Fairs or Markets ſhall be kept in Churchyards: And by the 88th Canon, The Churchwardens and their Aſſiſtants ſhall ſuffer no Plays, Feaſts, Banquets, Suppers, Church Ales, Drinkings, Temporal Courts or Leets, Lay Juries, Muſters, or any other profane Uſage to be kept in the Church, Chapel, or Church-yard; neither the Bells to be rung ſuperſtitiouſly upon Holy-days or Eves, abrogated by the Book of Common Prayer, nor at any other Times, without good

good Cauſe, to be allowed by the Miniſter of the Place and themſelves.

Q. What Penalty is there upon Quarrelling in the Church or Churchyard.

A. By 5 *Ed.* VI. *c.* 4. Whoſoever ſhall Quarrel by Words only, chide or brawl in any Church, or Churchyard, ſhall be ſuſpended by the Ordinary; that is to ſay, if he be a Layman, *ab Ingreſſu Eccleſiæ:* And if he be a Clerk, from the Miniſtration of his Office, for ſo long Time as the ſaid Ordinary ſhall by his Diſcretion think convenient, according to the Fault; and if he ſhall ſmite or lay violent Hands upon any other in Church or Churchyard, he ſhall be *ipſo facto* excommunicate: Any Perſon maliciouſly ſtriking with any Weapon in Church or Churchyard, or drawing any Weapon with Intention to ſtrike with the ſame any other, and being convict thereof by the Verdict of twelve Men, or by his own Confeſſion, or by two lawful Witneſſes, ſhall have one of his Ears cut off; and if he have no Ears, he ſhall be burnt in the Cheek, with an hot Iron having the Letter *F*, for *Fray-Maker* or *Fighter*, and ſtand *ipſo facto* excommunicate: And that, as has been reſolved, tho' in his own Defence.

Q. Does the Offenders being *Excommunicate ipſo Facto* take away the Neceſſity of any Sentence of Excommunication?

A. * Yes: But nevertheleſs, he that ſtrikes does not ſtand excommunicate, until he be

thereof convicted at Law, and ſuch Conviction tranſmitted to the Ordinary.

Q. To whom belongs the Fencing of the Churchyard?

A. * Tho' the Freehold of the Churchyard is in the Parſon, yet being the common Burial-Place of the Pariſhioners, the fencing and keeping of it in good Order belongs to the Pariſh, and the Churchwardens are to take Care of it accordingly. Vide *Appendix.*

Q. Who are to take Care of the Repairs of the Church?

A. The Churchwardens ſhall take Care that the Churches (*i. e.* all Parts of them, except the Chancel and private Iſles or Chapels, belonging to private Perſons) be well and ſufficiently repair'd, the Windows well glaz'd, and the Floors kept paved plain and even, *Can.* 85. for doing of which, and for the Repairs of the Churchyard, they are enabled to make *Rates*, together with the Pariſhioners, aſſembled upon publick Notice given in the Church: And the major Part of them that appear, ſhall bind the Pariſh; or if none appear, the Churchwardens alone may make the Rate.

Q. To whom belongs the Cognizance of Rates made for the Reparation of Churches and Churchyards?

A. To the *Spiritual Court*; and no Prohibition ſhall lie, where it puniſhes for the Neglect of it, 13 *Ed.* I. *c.* 1.

Q. Does

Q. Does this hold without Exception?

A. * It has been declared, That where particular Perſons are bound by Cuſtom, to make good ſo much of the Fence as adjoins to their ſeveral Grounds, they ſhall be ſued, upon Neglect, in the *Temporal*, and not in the *Spiritual* Court; tho' the ſaid Statute 13 *Ed.* I. *c.* 1. ſeems to be abſolute in all Caſes.

Q. What Difference is there between a *real* and a *perſonal* Rate?

A. * A Rate for the Reparation of the Fabrick of the Church is *real*, charging the Land, and not the Perſon; but a Rate for Ornaments is *perſonal*, upon the Goods, and not upon the Land.

Q. What is the Conſequence of this Diſtinction?

A. That the Rate for Reparation of the *Fabrick* of a Church ſhall be laid upon all *Lands* within the Pariſh, tho' the Occupiers inhabit in another Pariſh: But * to the *perſonal* Charge Inhabitants alone are liable; and not thoſe who only occupy in that Pariſh, and live in another.

Q. Who is to pay where ſuch Lands are in *Farm?*

A. * Not the *Leſſor*, but the *Tenant.*

Q. Is an *Impropriator* of a Rectory or Parſonage, who is bound to repair the Chancel, bound alſo to contribute to the Reparations of the Church?

A. * Yes, in caſe he hath Lands in the Pariſh.

Q. Are

Q. Are the Inhabitants of a *Precinct* where is a *Chapel*, contributary to the Repairs of the Mother-Church?

A. Yes, tho' it is a Parochial Chapel, and tho' they do repair it, * they are of common Right contributory to the Repairs of the Mother-Church, unleſs they can plead a Diſcharge by Preſcription Time out of Mind, or by Compoſition.

Q. What if a Church be ſo much out of Repair, that it is neceſſary to *pull it down*, or ſo little that it needs to be *enlarg'd*?

A. * The major Part of the Pariſhioners (having firſt obtain'd the Conſent of the Ordinary to do what is needful, and meeting upon due Notice) may make a Rate for *new-building*, or *enlarging*, as there ſhall be Occaſion.

Q. The *Hall* of a *Company* being rated to the Repairs of a Church, againſt whom may the Spiritual Court proceed in caſe of Non-payment?

A. * Againſt the Maſter and Wardens of ſuch Company.

Q. Whoſe is the Soil and Freehold of the Church?

A. Of common Right the Parſon's. The *Uſe* of the Body of the Church, and the Repair of it, common to the Pariſhioners.

Q. Who hath the Right of diſpoſing of the *Seats* therein?

A. The Ordinary; unleſs in ſome particular Caſes of Preſcription and Cuſtom.

What are thoſe Caſes?

A. An

A. An *Iſle* in a Church which hath Time out of Mind belong'd to a particular Houſe, and been maintain'd and repair'd by the Owner of that Houſe, is Part of his *Frank-tenement*, and the Ordinary cannot diſpoſe of it, or intermeddle in it. * A Seat alſo in the *Nave* or Body of the Church may be preſcrib'd for, as belonging to a Houſe; but then the Perſon pleading ſuch Preſcription, and praying Prohibition thereupon, muſt of Neceſſity alledge the Reparation of it by *himſelf*, becauſe if the *Pariſh* have repair'd, the Ordinary's Right ſtands good, notwithſtanding Poſſeſſion and Uſe Time out of Mind.

Q. What Cuſtom of diſpoſing of Seats ſtands good againſt the Right of the Ordinary?

A. * A Cuſtom, Time out of Mind, of diſpoſing of Seats by Churchwardens, and major Part of the Pariſh, or by twelve, or any particular Number of the Pariſhioners, has been held a good Cuſtom; and where the Ordinary interpoſed, Prohibition has been granted.

Q. May *Priority* in a Seat be preſcrib'd for?

A. Yes, * as well as the Seat itſelf.

Q. Can a Seat be granted by the Ordinary to a Perſon and his *Heirs* abſolutely?

A. No: For the Seat doth not belong to the Perſon, but to the *Inhabitant*; and for the ſame Reaſon, a Seat cannot be claim'd by Preſcription, as * appendant to *Land*, but to a *Houſe*: And yet it hath been held, that a Seat in

in an *Ile* may be preſcrib'd for by an Inhabitant of another Pariſh.

Q. Who is bound to repair the Chancel?

A. The Parſon, by the Cuſtom of *England:* Yet ſo that if the Cuſtom hath been for the Pariſh, or the Eſtate of a particular Perſon, to repair the Chancel, that Cuſtom ſhall be good.

Q. Whom do you mean here by the Parſon?

A. Both the Rector or *Spiritual Parſon*, and alſo the *Impropriator.*

Q. In what manner may Impropriators be compell'd to repair Chancels? By *Spiritual Cenſures* only, or, as Incumbents, by *Sequeſtrations?*

A. * It hath been held, that ſince Impropriations are now become *Lay Fees*, the Lay Impropriator *was not to be ſequeſter'd:* Tho' there ſeems to be good Arguments why he ſhould, ſince Impropriations, before they became Lay Fees, were undoubtedly liable to Sequeſtration; ſince the *King* was to enjoy them in the *ſame manner* as the *Religious* had done, and nothing was convey'd but what the Religious enjoy'd, *i. e.* the Profits *over and above* the finding of Divine Service, and the repairing of the Chancel, and other Eccleſiaſtical Burdens; and ſince the *General Saving* (31 *Hen.* VIII. *c.* 13.) of all Rights which any Perſon had before, may well be extended to a Saving of the Right of the Ordinary in this Particular; which Right he undoubtedly had by the Law and Practice of the Church; nor does

does it appear to have been abrogated by any Statute whatſoever.

Q. Is repairing of the *Chancel* a Diſcharge from contributing to the Repairs of the *Church?*

A. * Yes; unleſs for Lands which are not Parcel of the Parſonage.

Q. Who has the Right of Diſpoſition of the Seats of the Chancel?

A. The Ordinary, in like manner, as of thoſe in the Body of the Church: For the Freehold of the Church is as much in the Parſon as the Freehold of the Chancel; but this hinders not the Authority of the Ordinary in the Church, and therefore not in the Chancel?

Q. Where is the Seat of the Rector Impropriate?

A. He is intitled, as ſuch, * to the *chief Seat* in the Chancel; unleſs another has it by Preſcription.

Q. Who are to take Cognizance of the Decays and Want of Reparation of Churches?

A. Every Dean, Dean and Chapter, Archdeacon, and others, which have Authority to hold Eccleſiaſtical Viſitations, are by the 86th Canon oblig'd to ſurvey the Churches of his or their Juriſdiction in Perſon, or cauſe the ſame to be done, once in every three Years.

Q. What are the proper Ornaments and Furniture of Pariſh Churches?

A. They are either ſuch as are neceſſary, and

and which the Churchwardens of every Pariſh are bound to provide at the Charge of the Pariſhioners; as, a Font, Communion Veſſels and Furniture, Veſtments for the Miniſtration of Divine Service; all which ſhall be taken Notice of in their proper Places; a decent and comely Pulpit, a convenient Seat for the Miniſter to read Service in, a Cheſt for Alms with three Keys, a Book of Common Prayer, a large Bible, a Book of Homilies, and a Parchment Book for the Regiſtring of Chriſtenings, Weddings, and Burials: Or elſe ſuch as tho' not abſolutely neceſſary, yet the Pariſhioners may be bound to by an Agreement of the Majority of them met in Veſtry, as Bells, Pulpit-Cloth and Cuſhion, Organs, Conveniences for Kneeling and Prayers, and Sacraments, *&c.* and the like. The Churchwardens are to take Care alſo that the Ten Commandments be ſet upon the Eaſt End of every Church and Chapel, where the People may beſt ſee and read the ſame, and other choſen Sentences, written upon the Walls in Places convenient.

Q. What is the regular Methód of *Regiſtring?*

A. The Regiſter-Book ought to be kept in a Coffer with three Locks and Keys, whereof the one to remain with the Miniſter, and the other two with the Churchwardens ſeverally; ſo that none of them without the other may take it out. And on every *Sunday* after Morning

Morning or Evening Prayer, the Miniſter, in the Preſence of the Churchwardens, ſhould make the Entries of the Week before, and to every Page of the ſaid Book, when fill'd with Inſcriptions, ſubſcribe their Names. *Can.* 70.

Q. What further Care is taken for the Preſervation of Regiſters?

A. The Churchwardens are once a Year, within one Month after *Lady-Day*, to tranſmit to the Biſhop of the Dioceſe, or his Chancellor, a true Copy of the Names of all Perſons chriſten'd, married or buried in their Pariſh, in the Year before, ended at the ſaid *Lady-Day*, with the Day and Month in which every ſuch Chriſtening, Marriage and Burial wa had, ſubſcribed with the Hands of the Miniſter and Churchwardens, to the End the ſame may faithfully be preſerved in the Regiſtry of the ſaid Biſhop: Which Certificate ſhall be receiv'd without Fee. *Ibid.*

Q. Is a Regiſter thus preſerv'd good Evidence?

A. Yes: And * the Falſifying it is puniſhable at Common Law: For Inſtance, one was fined 200*l.* for forging the Entry of a Marriage.

Q. What if the Miniſter or Churchwardens be negligent of their Duty in this Reſpect?

A. The Biſhop or his Chancellor may proceed againſt them for Contempt.

Q. When the Goods of the Church are taken away, what Remedy is there againſt him that takes them?

A. The

A. The Churchwardens may have * an Action at Common Law; or they may have Remedy in the Spiritual Court; which seems the more proper, because at Common Law only Damages will be recover'd, but the Spiritual Court will decree the restoring of the Things themselves.

Q. Are Trees growing in the Churchyard to be reckon'd amongst the Goods of the Church?

A. * Yes: Nor has any one Authority to dispose of them but the Parson, or Vicar, whose Right it is to repair.

Q. Is the Parson at Liberty to dispose of them as he pleases?

A. No: He is allow'd to cut them down for the *Repair of the Chancel*, and, if he thinks fit, he may suffer the Parishioners to do it for the *Repair of the Church*; but this is left to his own Charity and Discretion.

Q. What if it appear, that the Person whose Right they are, intends to cut them down *for other* Purposes?

A. * A Prohibition will be granted to hinder Waste; and if they are actually cut down, 'tis thought an Indictment lies, upon 35 *Ed.* I. *cap.* 4. and that the Person may be fined.

Q. What if the Goods of the Church be stollen?

A. It is Sacrilege and Robbery, and the Churchwardens may have an Appeal of Robbery; and a Libel may be also in the Spiri-

tual Court againſt the Offender *pro Salute animæ.*

Q. What if a Perſon in the Night doth break the Church and enter?

A. * 'Tis Burglary; for the Church is the *Houſe of God.*

Q. Can the Pariſhioners have an Action of Account againſt the Churchwardens for waſting the Goods of the Church?

A. No: They muſt make new Churchwardens, and thoſe may bring an Action of Account againſt the former.

Q. How many Sorts of Chapels are there?

A. Free Chapels, *Domeſtick* Chapels, and Chapels *under a Mother-Church*; of which laſt ſome are merely *Chapels of Eaſe*, others Chapels of Eaſe and *Parochial.*

Q. What is a Chapel merely of Eaſe?

A. That which was not allow'd a Font at it's firſt Inſtitution, and which is only us'd for the Eaſe of the Pariſhioners in Prayers and Preaching, (Sacraments and Burials being receiv'd and perform'd at the Mother-Church,) and commonly where the Curate is removable at the Pleaſure of the Parochial Miniſter.

Q. What is a *Chapel of Eaſe Parochial?*

A. A Chapel inſtituted with Parochial Rights: But even in this Caſe, * there is uſually, if not always, a Reſervation of repairing to the Mother-Church, on a certain Day or Days, in order to preſerve the Subordination.

Q. Can * a Chapel preſcribe for Tythes againſt the Mother-Church ?

A. Yes; it being a uſual Compoſition upon the Erection of a Chapel, to pay a certain Sum of Money to the Parſon and his Succeſſor in lieu of Tythes.

Q. How are the Repairs of a Chapel to be made ?

A. By Rates on the Landholders within the Chapelry, in the ſame Manner as the Repairs of a Church; and ſuch Rates are alſo to be enforc'd by Eccleſiaſtical Authority.

Q. If a Patron of a Chapel do *Preſent* to that Chapel ----- ?

A. It ſhall become a Church, * and be Preſentative: And ſo in Donatives, if the true Patron preſent, and his Clerk is admitted and inſtituted, it is become Preſentable, and never ſhall be Donative after; * but a Preſentation to a Mother-Church *cum Capella de N.* if it was originally a diſtinct Pariſh Church, ſhall not hinder it from remaining ſo.

Q. By whom ought a *Chapel or no Chapel* to be tried ?

A. By the Spiritual Judge: Becauſe a Chapel dependant on a Mother-Church cannot be founded * but with Licence of the Ordinary.

Q. What is a *Free Chapel ?*

A. One that is exempt from all ordinary Juriſdiction, having been originally of Royal Foundation.

Q. May *Free Chapels* continue ſuch in Point of *Exemption* from *Ordinary Viſitation*, tho'

the Head or Members receive Inſtitution from the Ordinary?

A. Yes, this appears beyond Exception, from an Inſtance to this Purpoſe, in the *Regiſter*. *Vide* the *Codex*, *p.* 237.

Q. May the King erect a Free Chapel and exempt it from the Juriſdiction of the Ordinary?

A. Yes; and our Law Books add, that he may Licence any Subject to found ſuch a Chapel, with ſuch Exemption. (Qu.)

Q. What is a Domeſtick or Private Chapel?

A. A Place, (Chapel or Oratory) belonging to the Houſe of ſome Nobleman, or Great Perſon, Licenſed by the Biſhop for the Celebration of Divine Service, in Caſe of great Diſtance from the Pariſh Church, or of great Infirmities.

Q. Does Attendance upon Divine Service in private Chapels excuſe the Lords and Maſters of the Houſes where the ſaid Chapels are, and their Families, from reſorting to their Pariſh Churches?

A. Yes, provided they do not obſtinately refuſe to come to Church, and alſo that they be preſent at the Pariſh Church where they are Reſident, or ſome open common Church, at leaſt four Times, and receive the Communion once, in every Year. 23 *Eliz. cap.* 1.

Q. What Penalty is there upon Preaching or Adminiſtring the Holy Communion, unleſs in Caſe of Neceſſity, in private Houſes?

A. Suſpenſion for the firſt Offence, and Excommunication for the Second. *Can.* 71.

Q. Where are the Bounds of Pariſhes, tho' coming in Queſtion in a Spiritual Matter, to be tried?

A. In the *Temporal* Court, * but the Bounds of *Vills* are triable in the *Eccleſiaſtical* Court.

Q. If a Queſtion is depending whether a *Chapel of Eaſe* or a *Pariſh Church*, where ſhall it be tried as to its Limits?

A. * In the Temporal Court; and ſo it is, if the Point be, whether a *Chapel of Eaſe* or a *Parochial Chapel.*

Q. What would in great meaſure prevent the Limits of Pariſhes coming in Queſtion?

A. The frequent and regular holding of Perambulations.

Q. How come they to be laid aſide, and how far are they ſtill retained?

A. In the Times of Popery they were accompanied with two great Abuſes, *viz.* with Feaſting and with Superſtition; being performed in the Nature of *Proceſſions*, with Banners, Hand-Bells, Lights, ſtaying at Croſſes, *&c.* And therefore, when Proceſſions were forbidden by the Injunctions of Queen *Elizabeth*, the uſeful and innocent Part of Perambulations was retained in theſe Words: "*But yet for* "*retaining of the Perambulation of the Cir-* "*cuits of Pariſhes, they ſhall once in the Year,* "*at the Time accuſtomed, with the Curate and* "*the ſubſtantial Men of the Pariſh, walk about* "*the Pariſhes as they were accuſtomed, and at*

"*their*

" *their Return to the Church, make their Com-*
" *mon Prayers. Provided that the Curate in*
" *their ſaid common Perambulations, uſed here-*
" *tofore in the Days of Rogations, at certain*
" *convenient Places, ſhall admoniſh the People*
" *to give Thanks to God, in the beholding of*
" *God's Benefits, for the Increaſe and Abun-*
" *dance of his Fruits upon the Face of the*
" *Earth, with the Saying of the* CIII *Pſalm,*
" Benedic anima mea, &c. *At which Time*
" *alſo the Miniſter ſhall inculcate theſe, or ſuch*
" *Sentences, Curſed is he which tranſlateth the*
" *Bounds and Dolles of his Neighbour; or*
" *ſuch other Order of Prayers as ſhall be here-*
" *after appointed.*

Q. Who are the proper Officers belonging to Pariſh Churches and Chapels?

A. Pariſh Clerks, Churchwardens and Sideſmen; to which may be added Overſeers of the Poor.

Q. What was the Original of Pariſh Clerks?

A. Pariſh Clerks were heretofore *real Clerks*; of whom every Miniſter had at leaſt one to aſſiſt under him, in the Celebration of Divine Offices.

Q. Who has the Choice of the Pariſh Clerk?

A. Pariſh Clerks as well by the Common Law, as by the Laws of the Church were heretofore appointed by the Miniſter alone, and by Canon 91ſt, the Right of putting in the Pariſh Clerk is confirmed to the Parſon or Vicar, or Miniſter of the Place for the Time being, who is to ſignify his Choice to the Pariſhioners

the next *Sunday* following in the Time of Divine Service: But ſince the making of this Canon, this Right hath often been conteſted between Incumbents and Pariſhioners, and * Prohibitions prayed, and always obtain'd, to the Spiritual Court, for maintaining the Authority of the Canon in Favour of the Incumbent, againſt the Plea of Cuſtom in Behalf of the Pariſhioners.

Q. Can the Ordinary *Deprive* a Clerk for Misbehaviour?

A. * It is ſaid, that they only, who put him in, can diſplace him; but the Ordinary may Cenſure and Excommunicate him.

Q. Who has the Right of admitting him?

A. After he is choſen and declared by the Miniſter, he is uſually Licenſed by the Ordinary, and may ſue for his Dues in the Eccleſiaſtical Court.

Q. What are the Qualifications required in a Pariſh Clerk?

A. He ſhall be of twenty Years of Age at the leaſt, and known to be a Perſon of honeſt Converſation, and ſufficient for his Reading, Writing, and alſo for his competent Skill in Singing (if it may be.)

Q. What are Churchwardens?

A. Antient Officers Annually choſen, to look to the Church, Church-yard, and the Things that belong to both, to provide what is neceſſary for the Performance of Divine Service, and to obſerve the Behaviour of the Pariſhioners, concerning ſuch Faults as belong to the Eccleſiaſtical Juriſdiction.

Q. Whom are they to be choſen by?

A. By the joint Conſent of the Miniſter and the Pariſhioners, if it may be, but if they cannot agree upon ſuch a Choice, then the Miniſter ſhall chooſe one and the Pariſhioners another. But even this Right, as well as that of nominating the Pariſh Clerk, in ſome Places hath been loſt by *Diſuſe*, and * it hath been ſaid, that of common Right every Pariſh ought to chooſe their own Churchwardens, which Right is not to be overthrown but by a contrary Cuſtom. Therefore ſuch Incumbents, as are intitled by Cuſtom as well as Canon, to nominate one, are concerned for the Good of themſelves and their Succeſſors, to ſee that Right kept up.

Q. What are Sideſmen?

A. Officers (two, three or more, according to the Largeneſs of the Pariſh) choſen by the Miniſter and Pariſhioners, if they can agree, otherwiſe to be appointed by the Ordinary, to be Aſſiſtant to the Churchwardens in the Execution of their Office.

Q. When are the Churchwardens and Sideſmen to be choſen?

A. In *Eaſter* Week, and ſworn the firſt Week after, or ſome following Week, according to the Direction of the Ordinary.

Q. What is the Oath of a Churchwarden?

A. *You ſhall ſwear truly and faithfully to execute the Office of a Churchwarden within your Pariſh, and according to the beſt of your Skill and Knowledge preſent ſuch Things and Perſons, as to your Knowledge are preſentable*

by the Laws Eccleſiaſtical of this Realm. So help you God, and the Contents of this Book.

Q. If any Perſon elected to be Churchwarden, ſhall refuſe to take the Oath, according to Law ——?

A. * He may be excommunicated for ſuch Refuſal.

Q. If the Party elected offer himſelf, and the Eccleſiaſtical Judge refuſe to tender the Oath to him —?

A. * A *Mandamus* will be granted from the Temporal Court, and an Action upon the Caſe may be brought againſt him if he refuſes to obey it.

Q. How long is the Office of Churchwardens and Sideſmen reputed to continue?

A. Till the new Churchwardens that ſhall ſucceed be ſworn.

Q. When are the Churchwardens to give up their Accompts, and to whom?

A. At the End of the Year, or within a Month after at the moſt, upon Notice beforehand, they are to give an Account of their Receipts and Diſburſements to the Miniſter and Pariſhioners, and deliver what remains in their Hands to the Pariſhioners, or to the new Churchwardens.

Q. What if the Churchwardens refuſe to Account?

A. They may be preſented at the next Viſitation; or the new Officers, or any of the Pariſh that have Intereſt, may by Proceſs, call them to Account before the Ordinary, and may

may there make their Exceptions againſt it; or the ſucceeding Churchwardens may ſue them by Writ of Accompt at Common Law.

Q. What if their Receipts fall ſhort of their Diſburſements?

A. The ſucceeding Churchwardens are bound to pay what is due to them, and Account for it amongſt their Diſburſements, to the Pariſhioners, at the End of the Year.

Q. Can they be call'd to Account again, after their Account has been allow'd by the Miniſter and major Part of the Pariſhioners preſent?

A. No, unleſs ſome Fraud in their Accounts is afterwards diſcovered.

Q. Are Churchwardens a Corporation?

A. Being Wardens of the Goods, Works and Ornaments of the Church, they are by Reaſon of ſuch Truſt, ſo far incorporated by the Law, as to be enabled * to ſue for the Goods, and to bring an Action of Treſpaſs for them, and alſo to purchaſe Goods for the Uſe of the Pariſh; * but they are not a Corporation in ſuch Sort as to purchaſe Lands, or to take by Grant; except in *London*, where they are by Cuſtom a Corporation for thoſe Purpoſes alſo.

Q. Is the Releaſe of one Churchwarden a Bar to the Action of the other?

A. In no Caſe; for what they have is *to the Uſe of the Pariſh.*

Q. Who are exempted from being Churchwardens?

A. All

A. All Peers, Clergymen, Parliament Men, Servants to the King in Ordinary, Lawyers and Attornies, Phyſicians, Surgeons and Apothecaries, Teachers or Preachers of Diſſenting Congregations, Regiſter'd Seamen, though not in actual Service, and every one who has proſecuted a Felon to Conviction.

Q. What if a Diſſenter who ſcruples the Oath be choſen Churchwarden?

A. He may execute the Office * by a ſufficient Deputy by him to be provided, that ſhall comply with the Laws in that Behalf.

Q. What is a *Select Veſtry?*

A. A certain Number of Perſons choſen to have the Government of the Pariſh.

Q. Whence do ſelect Veſtries ſeem to have grown?

A. From the Practice of chooſing a certain Number of Perſons yearly, to manage the Concerns of the Pariſh for that Year; which by Degrees came to be the *Fix'd* Method, and the Pariſhioners loſt not only their Right to concur in the publick Management, as oft as they would attend, but alſo (in moſt Places, if not all) the Right of electing the Managers.

Q. Is ſuch a Cuſtom of the Government of Pariſhes a good Cuſtom?

A. It hath been ſo adjudged, in that the Churchwardens accounting to them was * adjudged *a good Account.*

Q. What is the Subſtance of the Act 7 *Annæ*, *c.* 14, for the better Preſervation of Parochial Libraries?

A. They

A. They are to be preſerved for the Uſes, and according to the Rules directed by the Founders; for which every Incumbent ſhall give good Security, and may bring an Action, in the Name of the Ordinary, againſt any Perſon taking away, or detaining any of the Books; whereupon treble Damages ſhall be given, with Coſts of Suit, to be applied to the Uſe of the ſaid Library. And the Ordinary ſhall have Power to viſit ſuch Libraries, by Commiſſion, or in Perſon. Catalogues of the Books ſhall be taken, and ſign'd by the Incumbents, and deliver'd to the Ordinary. Upon the Death or Removal of the Incumbent, the Library ſhall be ſhut up, till there ſhall be a new one; unleſs the Place be uſed for Pariſh-Buſineſs, for which it ſhall be open'd. Benefactions of Books ſhall be enter'd by the Miniſter, and additional Rules and Orders made by the Ordinary, but not contrary to the Will of the Donor. No Books ſhall be alienable in any Caſe, unleſs there be Duplicates; and if any be loſt, a Warrant may be granted, for the Search of it, and to reſtore it, by any Juſtice of the Peace.

Q. Are there no Exceptions to this Act?

A. The Library at *Rygate* in *Surrey* being conſtituted in another Manner, is not included in it.

Q. You mention'd Overſeers of the Poor amongſt the Officers of Churches and Chapels; Does Proviſion for the Poor fall properly within a *Syſtem of Eccleſiaſtical Law?*

A. No:

A. No: But being a *Parochial Concern*, it is not foreign to the Buſineſs of an Incumbent, and therefore is here to be taken Notice of; that whilſt the Determination of ſuch difficult Points and Caſes, as may ariſe upon the Statutes relating to it, is left to their proper Courts, Parochial Miniſters may not be unacquainted with that Part which may be ſometimes of Uſe to them; namely, the plain Tenor and Letter of the Law.

Q. What was the Original of Overſeers of the Poor?

A. Before the Reformation, the Poor were maintain'd by Offerings, and Oblations of pious Men, and by the Religious Houſes. The firſt Statute made for the Relief of the Poor, was 43 *Eliz. c.* 2. by which Publick Officers are created to provide for the Poor of the Pariſh, who are to be nominated yearly in *Eaſter* Week, or within a Month after, by two Juſtices of the Peace, one *Quorum*: They muſt be Houſeholders, and are ſometimes Two, Three, or Four, according to the Largeneſs of the Pariſh.

Q. What is their proper Buſineſs?

A. They are to take Order from Time to Time to ſet the Poor to Work, and to relieve them: To raiſe by Taxation, a convenient Stock of Flax, Hemp, Wool, or other Ware, to employ them; and Money for the Lame, Impotent, *&c.* and for putting out Children Apprentices.

Q. What

Q. What Method is laid down in this Act for their more effectually doing of this?

A. They are to meet with the Church-wardens, who, in this Act, are all along join'd with them, every Month in the Church, after Divine Service, on *Sunday* in the After-noon, to conſider of ſome good Courſe to be taken in the Premiſes; and at the End of the Year, within four Days, ſhall account to the Juſtices, and deliver the Money remaining to their Succeſſors, upon Pain to forfeit 20 *s.*

Q. How are the Poors Rates to be levied?

A. They may be levied by Diſtreſs; and in Defect thereof, the Party may be committed to the common Gaol of the County till Payment.

Q. Where is a Perſon to be relieved who is over-rated?

A. At the Quarter-Seſſions.

Q. What if a Pariſh is not able to relieve its own Poor?

A. They may be reliev'd by the Juſtices from other Pariſhes.

Q. Are not the Relations of the Poor obliged to relieve them?

A. The Father, Grandfather, Mother, and Grandmother, and the Children, of every poor Perſon, being of ſufficient Ability, ſhall relieve him according to ſuch Manner and Rate, as by the Juſtices of Peace, where ſuch ſufficient Perſons dwell, or the greater Number of them at their General Quarter-Seſſions, ſhall be aſſeſſed, upon Pain to forfeit 20 *s.* *per* Month.

Q. What

Q. What if the Parish lies in two Counties or Liberties?

A. The Justices shall only meddle in their proper Districts, but the Churchwardens and Overseers shall act jointly.

Q. If the Poor refuse to work, being able — ?

A. They shall be sent to the House of Correction.

Q. What other Power have the Overseers besides what you have already mention'd?

A. They have Power, with the Assent of two Justices, to bind poor Children Apprentices: The Males till the Age of 24; and a Woman-Child till the Age of 21, or the Time of her Marriage.

Q. What Poor are the Overseers obliged to relieve?

A. Such only as have a Settlement in the Parish.

Q. How many ways may a Settlement be gained?

A. 1. By Birth. 2. By Continuance of forty Days in a Parish, to be accounted from Publication of Notice in Writing; which he or they shall deliver to the Churchwardens and Overseers, with Notice of his or their Abode, and the Number of his or her Family: Which shall be read immediately after Divine Service, in the Church or Chapel of the Place, the next Lord's-Day; and shall be register'd by the Churchwardens or Overseers, in a Book kept for the Accompts of the Poor, on Pain of 40 *s.*

to

to the Uſe of the Party griev'd. 3. By executing an annual Office in the Town, and Pariſh, on his own Account. 4. By paying a Share to the Publick * Taxes or Levies, of ſuch Towns, except to the Scavengers, or Repairs of the Highways. 5. If any unmarried Perſon, not having Child or Children, ſhall be lawfully hired for a Year, ſuch Service for a Year ſhall be deemed a good Settlement, without Notice. 6. By being bound an Apprentice, and inhabiting in a Town or Pariſh, unleſs with Certificate Perſons. 7. By renting a Tenement of Ten Pounds a Year. 8. By having a Houſe or * Land of their own, tho' under Ten Pounds a Year. (But *vide* the Table of References) 9. By Wandring and Begging in a Pariſh without being apprehended, where the Place of Birth cannot be diſcover'd. All theſe Caſes gain a legal Settlement; ſo that if any poor Perſon was ſettled in a Pariſh by any ſuch Means, and hath not gain'd a Settlement elſewhere, he is under the Care of the Overſeers of the Poor of that Pariſh, where he laſt gain'd ſuch a Settlement, if he falls into Poverty, and wants Relief: And where he himſelf is ſettled, his Family muſt follow him.

Q. How may a Perſon who has not gain'd a legal Settlement, and is likely to become chargeable, be remov'd?

A. By Warrant from any two Juſtices of Peace, (one *Qu.*) he may be removed to the Pariſh where he was laſt legally ſettled, unleſs he give Security to diſcharge the Pariſh.

Q. How

Q. How may a Perſon gain a *Preſent* Settlement, in any Pariſh where he is not legally ſettled, till he wants Relief?

A. If any Perſon ſhall come into a Place to inhabit, and deliver a Certificate to the Churchwardens, or Overſeers of the Poor of the Place, where he comes, under the Hands and Seals of the Churchwardens and Overſeers of any other Place, atteſted by two Witneſſes, thereby owning the Perſon mention'd in the Certificate to be an Inhabitant legally ſettled in that Pariſh or Place, ſuch Certificate, allow'd by two Juſtices of the Peace, ſhall give him a preſent Settlement till he ſtands in Need of Relief, and then he may be remov'd to the Place from whence ſuch Certificate was brought.

Q. In what Caſes can a Certificate Perſon gain a legal Settlement?

A. If he ſhall, *bona fide*, take a Leaſe of a Tenement of Ten Pounds a Year, or be legally placed in, and execute ſome annual Office in ſuch Pariſh, 9, 10 *Will.* III. *c.* 11.

Q. Where ſhall be the Settlement of Perſons bound Apprentices, or being hired Servants with Certificate Perſons?

A. Their Settlement ſhall be in ſuch Pariſh, as if they had not been bound or hired to ſuch Perſons. 12 *Ann. cap.* 18.

Q. What Regulations are there to be obſerved, as to the Perſons to be relieved?

A. No poor Perſons ſhall be reliev'd, whoſe Names are not regiſter'd in the Pariſh-Book, with the Time when they were firſt admitted to have Relief, and the Occaſion of their Neceſſity. And no other ſhall be allow'd to receive Collection, but by Authority under the Hand and Seal of the next Juſtice of the Peace, or by Order of Seſſions, except in Caſes of peſtilential Diſeaſes happening upon them or their Families; where ſuch Authority is not requiſite. And by 8 and 9 *W.* III. *c.* 30. poor Perſons that receive Relief, ſhall on the right Shoulder of the upper Garment, wear a large *Roman* P, with the firſt Letter of the Name of the Place or Pariſh where the ſaid Perſon inhabits; the poor Perſon refuſing to wear ſuch Badge, to be ſuſpended from his Allowance, and ſent to the Houſe of Correction. And if any of the Overſeers relieve ſuch Perſon not wearing ſuch Badge, upon Conviction before a Juſtice by one Witneſs, he forfeits for every ſuch Offence twenty Shillings, to be levied by Diſtreſs and Sale of Goods, one Moiety to the Informer, the other to the Poor of the Pariſh.

Q. Where any Wife, Child, or Children, are left by their Husbands, Fathers, or Mothers, upon the Charge of the Pariſh —— ?

A. The Churchwardens or Overſeers, by Warrant from any two Juſtices of the Peace, may ſeize ſo much of the Goods and Chattels, and ſo much of the annual Profits of the Lands and Tenements of ſuch Husband, *&c.*

as they ſhall direct; which Warrant being confirm'd at the next Quarter-Seſſions, the Juſtices may make an Order for the Sale of them, or for receiving the Rents and Profits, as they ſhall think fit.

Q. Does an Action lie againſt the Overſeers for Monies miſ-ſpent?

A. Yes: And the Evidence of the Pariſhioners may be taken concerning it in the Courts of *Weſtminſter*, or at the Aſſizes.

TIT. X.

Solemn Times of DIVINE SERVICE *in the* CHURCH *of* ENGLAND.

Q. WHAT are the *Solemn Times* of Divine Service in the Church of *England*?

A. Sundays and *Holidays*.

Q. How is the due Celebration of theſe provided for by the Canons?

A. All manner of Perſons within the Church of *England* ſhall celebrate and keep the *Lord's Day*, commonly call'd *Sunday*, and other *Holy Days*, according to God's holy Will and Pleaſure, and the Orders of the Church of *England* preſcrib'd in that behalf; that is, in hearing the Word of God read and taught, in private and publick Prayers, and acknowledging their Offences to God, and Amendment of the ſame; in reconciling themſelves

ſelves charitably to their Neighbours where Diſpleaſure hath been, in oftentimes receiving the Communion of the Body and Blood of Chriſt, in viſiting of the Poor and Sick, uſing all godly and ſober Converſation. *Can.* 13.

Q. What Penalties are inflicted by *Statute* for prophaning the Lord's Day?

A. By 1 *Car.* I. *c.* 1. there ſhall be no Aſſembly of People out of their own Pariſhes on the Lord's Day, for any Sports whatſoever, nor any Bull-baiting or Bear-baiting, Interludes or Common Plays, or other unlawful Exerciſes or Paſtimes, uſed by any Perſons in their own Pariſhes, on Pain that every Offender, upon View of a Juſtice, Confeſſion, or one Witneſs, ſhall forfeit 3 *s.* 4 *d.*

And by the Stat. 1 *Jac.* I. *c.* 21. a Shoemaker putting Boots or Shoes to Sale on the Lord's Day, forfeits 3 *s.* 4 *d.*

By 3 *Car.* I. *c.* 1. no Butcher ſhall kill or ſell any Victual upon the Lord's Day, on Pain of 6 *s.* 8 *d.*

By 29 *Car.* II. *c.* 7. (this Statute being more full, and the Conviction more eaſy) no Perſon whatſoever ſhall exerciſe any wordly Labour, Buſineſs, or Work of their ordinary Calling on the Lord's Day, (except Works of Neceſſity and Charity, and the Dreſſing of Meat in Families, and the Selling of Meat in Victualling-Houſes) but ſhall exerciſe themſelves in Duties of Piety, publickly and privately, on Pain of 5 *s.* Forfeiture, if the Perſon

is fourteen Years old. And no Perſon ſhall publickly cry or expoſe to Sale any Goods whatſoever on this Day, (except Milk, which may be ſold before Nine in the Morning, and after Four a Clock in the Afternoon) on Pain of forfeiting the ſame.

Alſo no Drover, Horſe-Courſer, Waggoner, Butcher, or Higler, ſhall travel, or come to their Inn, on this Day, on Pain of 20*s.* upon Conviction, by View of one Juſtice, Confeſſion, or the Oath of one Witneſs.

And no Perſons ſhall travel with any Boat or Barge, except upon extraordinary Occaſion, with the Allowance of ſome Juſtice of the Peace, *&c.* on Pain of 5*s.*

In Caſe of Inability, *&c.* the Offender ſhall be ſet in the Stocks.

If any Perſon, travelling on the Lord's Day, is robbed, the Hundred ſhall not be charged, but they ſhall purſue the Offender with Hue and Cry.

No Perſon on the Lord's Day ſhall ſerve any Proceſs, *&c.* except in Caſes of Treaſon, Felony, or Breach of the Peace. The Service of all ſuch Proceſſes ſhall be void; and the Perſon ſerving the ſame ſhall anſwer Damages, as if he had done the ſame without Warrant; but by 5 *Ann. c.* 9. it is lawful to take up Perſons that have eſcap'd out of the *King's Bench* and *Fleet* Priſons, on the Lord's Day.

And a certain Number of Hackney Coaches are licens'd to ply on *Sundays* within the Bills of

of Mortality, and alſo of Watermen upon the *Thames*, at convenient Places.

Q. How many kinds are there of Holy-days?

A. They are either Feaſts or Faſts.

Q. What are the Feaſts to be obſerv'd in the Church of *England* through the Year, beſides *Sundays*?

A. The Days of the Feaſts of the Circumciſion of our Lord *JESUS CHRIST*. The *Epiphany*. The Converſion of St. *Paul*. The Purification of the bleſſed Virgin. St. *Matthias* the Apoſtle. The Annunciation of the bleſſed Virgin. St. *Mark* the Evangeliſt. St. *Philip* and St. *James* the Apoſtles. The Aſcenſion of our Lord *JESUS CHRIST*. St. *Barnabas*. Nativity of St. *John Baptiſt*. St. *Peter* the Apoſtle. St. *James* the Apoſtle. St. *Bartholomew* the Apoſtle. St. *Matthew*. St. *Michael* and all Angels. St. *Luke* the Evangeliſt. St. *Simon* and St. *Jude*. All Saints. St. *Andrew* the Apoſtle. St. *Thomas* the Apoſtle. Nativity of our Lord. St. *Stephen* the Martyr. St. *John* the Evangeliſt. The Holy Innocents.

Monday and *Tueſday* in *Eaſter* Week.

Monday and *Tueſday* in *Whitſon* Week.

Q. What Vigils or Evens are obſerved in the Church of *England*?

A. The Evens or Days next going before the Days of the Feaſts of the Nativity of our Lord, of *Eaſter*, of the Aſcenſion of our Lord,

Pentecoſt, and the Purification and the Annunciation of the bleſſed Virgin, of All Saints, and of all the Feaſts of the Apoſtles, except St. *Philip* and St. *James*, as falling between *Eaſter* and *Whitſunday*; and St. *John* the Evangeliſt, as falling between the Nativity and Epiphany. *Note*, St. *Barnabas* and St. *Paul* are not accounted of the *Twelve*.

Q. Why are they call'd Vigils?

A. Quod in eis non ſolum jejunandum eſt, ſed VIGILIIS *& Orationibus pernoctanter inſiſtendum.*

Q. What are the Days of Faſting or Abſtinence?

A. I. The Forty Days of *Lent*.

II. The *Ember* Days, at the four Seaſons, being the *Wedneſday*, *Friday*, and *Saturday* after the firſt *Sunday* in *Lent*, the Feaſt of *Pentecoſt*, *Sept.* 14. and *Dec.* 13.

III. The three Rogation Days, being the *Monday*, *Tueſday* and *Wedneſday* before Holy *Thurſday*.

IV. All the *Fridays* in the Year, except *Chriſtmas* Day.

Q. What is the Meaning of *Ember Days*?

A. They are Faſts obſerv'd by the Church very early, and particularly by the Church of *England* in the *Saxon* Times, who call'd them ymb-ryne dagaſ, from whence (and not from *Embers*, or from the *Greek* ἀμέρα, as ſome have conjectured) our Name of *Ember Days* is to be derived. The Word ymb-ryne ſignifies

fies in *Saxon* a *Circle* or *Course*, and therefore they may be not improperly called the Circular Fasts, or Fasts in Course, being observed in the four Seasons on which the Circle of the Year turns, and accordingly call'd by the Canonists, the *Jejunia quatuor Temporum*, or Fasts of the four Quarters of the Year. 'Tis probable these Fasts were first instituted to beg God's Blessing on the Fruits of the Earth, and on ourselves in the Use of them, and not only on Account of Ordination.

Q. What are *Rogation* Days?

A. Days so call'd from the extraordinary Prayers and Supplications, which, with Fasting, were at this Time offer'd to God by devout Christians.

Q. When and upon what Account was the Observation of these Days establish'd in the Church?

A. The Use of earnest Supplications for the Mercy of God, which were called *Litanies*, was very early practised in the Christian Church; but this Season before our Lord's Ascension, for Litanies and Rogations, was fixed by *Mamertus* Bishop of *Vienne*, about the Middle of the fifth Century, upon the Prospect of some particular Calamities that threatned his Diocese, and afterwards grew into a Custom, in all the *French*, *German*, and *British* Churches.

Q. Is there any particular Service appointed for the Rogation Days?

A. No; but there are four Homilies, ſpecially provided to be read with the ordinary Service, on the three Days before, and on the fourth, namely Aſcenſion, or the Day of Perambulation; and in the Injunctions of Queen *Elizabeth*, where Proceſſions are forbidden, and a Reſervation made for Perambulations, it is provided, that the Curate in the ſaid common Perambulation (uſed heretofore in the Days of Rogations, at certain convenient Places) ſhall admoniſh the People to give Thanks to God in the beholding of God's Benefits, for the Increaſe and Abundance of his Fruits upon the Face of the Earth.

Q. What Obligation is there by Statute to obſerve the Days of Faſting or Abſtinence?

A. By 2, 3 *Ed.* VI. *c.* 19. none is allow'd to eat Fleſh upon any *Friday* or *Saturday*, or *Ember Days*, or in *Lent*, or any other * Fiſh-day, upon Pain of forfeiting 10*s.* and ten Days Impriſonment, for the firſt Offence; and for the ſecond, 20*s.* and twenty Days Impriſonment; and ſo *toties quoties*; except Perſons licenſed by the King, Aged, Sick, Women with Child, or lying-in, Priſoners, Officers and Soldiers;

* The Authors of the *Clergyman's Vade Mecum* ſeems to be miſtaken, when he ſays the Statute of 5 *Eliz. c.* 5. is *ſtill in Force*, which reſtrains the Eating of Fleſh by a much higher Penalty, *viz.* 3*l.* and three Months Impriſonment: For ſo much of that Statute as concerns the Eating of Fleſh and Fiſh, was expreſly repeal'd, 27 *Eliz. cap.* 11.

Soldiers; and this, as the Act ſets forth, partly upon a *Religious* Account, conſidering that due and godly Abſtinence is a Means to Virtue, and to ſubdue Mens Bodies to their Souls and Spirits; and partly upon a civil Account, for the Encouragement of the Fiſhery, and the Preſervation of Fleſh.

And by 1 *Eliz. c.* 2. all Perſons are obliged to reſort to their Pariſh Church on Holy-days, as well as Sundays, upon Pain of Puniſhment, by the Cenſures of the Church, and Twelvepence for every Offence, to be levied by Diſtreſs.

Q. If any of the Feaſt-days fall upon a *Monday*, when ſhall the Vigil or Faſt be kept?

A. On the *Saturday* next before it.

Q. Are there not ſome other Days, beſides the ſtated Feaſts and Faſts of the Church, preſcrib'd to be obſerv'd by Act of Parliament?

A. Yes; the 5th of *November*, as a Day of Thankſgiving for the Diſcovery of the Gunpowder Treaſon; the 29th of *May*, as an Anniverſary Thankſgiving for the Reſtoration of the Royal Family, and the Church; and the 30th of *January*, as a Day of Publick Humiliation for the Murder of King *Charles* I. which if it fall on a *Sunday*, is to be obſerv'd the Day following. To theſe may be added a fourth, (tho' not injoin'd by Act of Parliament) *viz.* the *Inauguration* Day, or the Day when the

King

King or Queen for the Time being began their reſpective Reigns.

Q. By what Authority is that Day obſerv'd?

A. The Obſervation of it, as to K. *Charles* I. was inforc'd by a particular Canon in the Year 1640, after the Example, as well "of the "godly Chriſtian Emperors, in the former "Times, as of our own moſt religious Princes, "ſince the Reformation;" as it is in the Preface to that Canon; which ſays farther, That a particular Form of Prayer was appointed by Authority for that Day, and Purpoſe, and injoins all Churchwardens to provide two of thoſe Books at leaſt. This Feſtival was diſus'd in the Reign of King *Charles* II. upon Occaſion of the Murder of his Royal Father, "which chang'd the Day into a Day of Sor-"row and Faſting," as is ſet forth in the Order for Reviving that Uſage in the firſt Year of K. *James* II. before the Service compoſed for that Purpoſe: Which Service, after another Diſuſe of that Feſtival, during the Reign of K. *William*, was reviſed, and the Obſervation of the Day commanded, by a ſpecial Order thereunto annex'd, in the ſecond Year of Queen *Anne*, and has ſince been continued to the Reign of our preſent gracious Sovereign King *George* II.

Q. May Miniſters appoint publick or private Faſts without Authority?

A. No

A. No Miniſter or Miniſters ſhall, without the Licence or Direction of the Biſhop of the Dioceſe firſt obtain'd and had under his Hand and Seal, appoint or keep any ſolemn Faſts, either publickly or in private Houſes, other than ſuch as by Law are, or by Publick Authority ſhall be appointed, nor ſhall be wittingly preſent at any of them, under Pain of Suſpenſion for the firſt Fault, of Excommunication for the ſecond, and of Depoſition from the Miniſtry for the third. *Can.* 72.

Q. What Notice is the Miniſter obliged to give the People of Holy-days or Faſting-days?

A. He is on the *Sunday* before, after the reading of the *Nicene Creed*, to declare unto People what Days are to be obſerved as ſuch in the Week following; and if he wittingly omit, and, being admoniſh'd by his Ordinary, offend again, he ſhall be cenſured according to Law. *Can.* 64.

TIT. XI.

Uniformity in the Publick Worſhip and Ceremonies of the CHURCH.

Q. WHERE, and by what Authority, is the Method of Publick Worſhip in the Church of *England* preſcribed?

A. In

A. In the Book of *Common Prayer, &c.* eſtabliſh'd by Act of Parliament 13, 14 *Car.* II. *c.* 4. commonly called the *Act of Uniformity*, in which it is enacted, That all and ſingular Miniſters in any Cathedral, Collegiate, or Pariſh Church or Chapel, or other Place of publick Worſhip, within this Realm of *England*, Dominion of *Wales*, and Town of *Berwick upon Tweed*, ſhall be bound to ſay and uſe the Morning-Prayer, Evening-Prayer, Celebration and Adminiſtration of both the Sacraments, and all other the Publick and Common Prayer, in ſuch Order and Form as is mentioned in the ſaid Book, and at the Times therein appointed.

Q. What other Acts are there for Uniformity in publick Worſhip?

A. An Act 2, 3 *Ed.* VI. *c.* 1. for Uniformity of Service and Adminiſtration of the Sacraments. Another 5, 6 *Ed.* VI. *c.* 1. adding to the Book of Common-Prayer, eſtabliſhed by the former Act, after it had been peruſed and perfected, a Form of making and conſecrating of Archbiſhops, Biſhops, Prieſts, and Deacons; which Act being repeal'd by Queen *Mary*, King *Edward*'s Book was reſtored with certain Additions and Alterations, by an Act 1 *Eliz. c.* 2. All which Laws, together with the Penalties enforcing them, for eſtabliſhing Common Prayer, are by the Act of Uniformity 13, 14 *Car.* II. to be in Force, and applied to the preſent Form; and the thirty-ſixth Article, concerning Conſecration and Ordination, ſhall be applied to the preſent Book.

Q. Are

Q. Are Diſſenters liable to thoſe Penalties?

A. No: They are exempted, by an Act 1 *Will.* and *Mar. c.* 18. which ſee, under Title XXV.

Q. What Cenſure does the *Canon* inflict upon Impugners of the Common Prayer?

A. To affirm that the Form of God's Worſhip in the Church of *England*, eſtabliſhed by Law, and contained in the Book of Common Prayer and Adminiſtration of the Sacraments, is a corrupt, ſuperſtitious, or unlawful Worſhip of God, or containeth any thing in it that is repugnant to the Scriptures, ſhall be Excommunication *ipſo facto*. Can. 4.

Q. If any Doubt ariſe in the Uſe and Practice of the Book of Common Prayer, who ſhall reſolve it?

A. The Biſhop of the Dioceſe, who by his Diſcretion ſhall take Order for the quieting and appeaſing the ſame, ſo that the ſame Order be not contrary to any thing contained in the ſaid Book; and if the Biſhop of the Dioceſe be in doubt, then he may ſend for Reſolution thereof to the Archbiſhop. *Preface to the Book of Common Prayer.*

Q. What Penalties does the *Statute* inflict upon Impugners of the Common Prayer?

A. By 1 *Eliz. c.* 2. Any Miniſter refuſing to uſe the Book of Common Prayer, or wilfully and obſtinately uſing any other, or preaching or ſpeaking in Derogation of it, ſhall, for his firſt Offence, loſe one Year's Profit of all his

ſpiritual

ſpiritual Promotions; for the ſecond, ſhall be impriſoned a whole Year, and deprived; and for the third, ſhall be deprived, and ſuffer Impriſonment during Life. Offenders not having ſpiritual Promotions, ſhall ſuffer, for the firſt Offence, one Year's Impriſonment; for the ſecond, Impriſonment during Life. Alſo any Perſon or Perſons, who ſhall in any Enterludes, Plays, Songs, Rhymes, or by other open Words, declare or ſpeak any thing in Derogation, deſpiſing, or depraving of the ſaid Book, or of any thing therein contain'd, or any Part thereof; or ſhall by open Fact, Deed, or by open Threatnings, compel, or cauſe, or otherwiſe procure, or maintain any Miniſter to uſe any other Form, or ſhall interrupt the Uſe of this; ſhall forfeit for the firſt Offence One-hundred Marks, for the ſecond Four-hundred Marks, for the third Goods and Chattels, with Impriſonment during Life: And in Default of Payment, for the firſt Offence, ſuffer ſix Months Impriſonment; for the ſecond, twelve Months.

Q. Has the Church Power to decree Rites and Ceremonies?

A. Yes, provided they be not *contrary to God's Word written*, Art. XX. And whoever, thro' his private Judgment, willingly and purpoſely doth openly break the Traditions and Ceremonies of the Church, which be not repugnant to the Word of God, and be ordain'd and approv'd by common Authority, ought to be rebuked openly, that others may fear to do the like, as he that offendeth againſt the

Common Order of the Church, and hurteth the Authority of the Magiſtrate, and woundeth the Conſciences of the weak Brethren. *Can.* 34.

Q. What Cenſure does the Canon inflict upon Impugners of the Rites and Ceremonies eſtabliſhed in the Church of *England*?

A. To affirm them to be Wicked, Antichriſtian, and Superſtitious; or ſuch as being commanded by lawful Authority, Men who are zealouſly and godly affected, may not with any good Conſcience approve them, uſe them, or, as Occaſion requireth, ſubſcribe unto them, ſhall be Excommunication *ipſo facto*. Can. 6.

Q. How are Miniſters, omitting the Uſe of the Common-Prayer and Ceremonies, after Subſcription, to be puniſhed?

A. By Suſpenſion: And, if no Submiſſion is made within a Month after, by Excommunication; and, after another Month, by Depoſition from the Miniſtry.

Q. Are Appeals allowed where an Eccleſiaſtical Judge hath proceeded judicially againſt obſtinate and factious Perſons, and Contemners of Ceremonies, for not obſerving the Rites and Orders of the Church of *England*, or for Contempt of publick Prayer?

A. No: Unleſs the Appellant do firſt perſonally promiſe and avow, before the Judge *ad quem*, that he will faithfully keep and obſerve them.

Q. What Proviſion is there by Act of Uniformity 13, 14 *Car.* II. *c.* 4. for Common Prayer,

Prayer, in ſuch Places of *Wales* where the *Welch* Tongue is commonly uſed?

A. The Biſhops of *Hereford*, St. *David*'s, *Aſaph*, *Bangor*, and *Landaff*, and their Succeſſors, ſhall take care that the Book be tranſlated into *Welch*, and provided in every ſuch Church, and uſed there; and alſo that an *Engliſh* Common Prayer be provided in every ſuch Church, for the ſpeedier Attainment of the *Engliſh* Tongue, by conferring both together.

TIT. XII.

Attendance upon the Publick Worſhip and Orderly Behaviour in the CHURCH.

Q. HOW is Attendance upon Divine Service enforced by *Canon?*

A. The Church-Wardens, and Sides-Men, or Aſſiſtants, ſhall diligently ſee that all the Pariſhioners duly reſort to Church upon all *Sundays* and *Holy-days*, and there continue the whole Time of Divine Service: And ſuch as ſhall neglect, without great and urgent Cauſe of Abſence, they ſhall admoniſh; and if after Admonition they amend not, they ſhall preſent them to the Ordinary of the Place. *Can.* 90.

Q. What Penalty does the *Statute* inflict upon ſuch as neglect to reſort to Church?

A. By 1 *Eliz. c.* 3. Forfeiture of twelve Pence for every Offence, to be levied by the

Churchwardens, by Diſtreſs and Sale of Goods, for the Uſe of the Poor of the Pariſh, where ſuch Offence ſhall be done; and by 23 *Eliz. c.* 1. every Perſon, above the Age of ſixteen Years, which ſhall not repair to ſome Church, Chapel, or uſual Place of Common Prayer, not having lawful Excuſe or Impediment, and is thereof lawfully convicted, ſhall forfeit for every Month twenty Pounds.

Q. Is it neceſſary that every one reſort to his *own* Pariſh Church?

A. By the Common Law or Practice of the Church of *England*, no Perſon can be duly diſcharged from attending his own Pariſh Church, or warranted in reſorting to another, unleſs he be firſt duly licenſed by his Ordinary; who is the proper Judge of the Reaſonableneſs of his Requeſt, and grants him Letters of Licence under his Seal, to be exhibited, as there ſhall be Occaſion, in Proof of his Diſcharge.

Q. What are the Rules of Common Law concerning Church Ways?

A. 1. The Right to a Church-way may be claimed and maintained by a Libel in the *Spiritual Court.*

2. A Church-way may commonly be * claim'd as a *Private-way.*

3. * *Preſcription* for a Church-way may be pleaded by any Inhabitant, in the *Spiritual-Court.*

Q. What Directions does the Canon lay down for orderly Behaviour in the Church?

A. No Man ſhall ſit covered in the Time of divine Service. All manner of Perſons ſhall reverently kneel upon their Knees, when the general Confeſſion, Litany, and other Prayers are read; and ſtand up at the Belief, and bow at the Name of *JESUS*; and attend quietly, and make their proper Reſponſes, and join audibly with the Miniſter in the Confeſſion, Lord's-Prayer, and Creed. None ſhall walk, or talk, or depart out of the Church, without urgent and reaſonable Cauſe; nor loiter in the Church-Yard, or Porch, or hinder the Miniſter or Preacher by rude and diſorderly Behaviour, untimely ringing of Bells, or other Noiſe. Theſe Offences are to be preſented. *Can.* 18, 19, 111.

Q. What Penalty does the Statute inflict upon Perſons diſturbing divine Service?

A. Any Perſon, who ſhall willingly and of purpoſe, maliciouſly and contemptuouſly, come into any Cathedral or Pariſh Church, Chapel, or tolerated Congregation, and diſquiet and diſturb the ſame, or miſuſe any Preacher, or Teacher, upon Proof thereof, before any Juſtice of Peace, by two or more ſufficient Witneſſes, ſhall find two Sureties, to be bound by Recognizance in the penal Sum of fifty Pounds; and in Default of ſuch Sureties, ſhall be committed to Priſon, there to remain till the next General or Quarter Seſſions; and upon Conviction of the ſaid Offence, at the ſaid General or Quarter Seſſions, ſhall ſuffer the Penalty of twenty Pounds, to the Uſe of the King and Queen's Majeſties, their Heirs, or Succeſſors, 1 *Will.* and *Mar. c.* 18.

TIT.

TIT. XIII.

Manner and Order of daily Service in the CHURCH.

Q. WHAT *Habit* is the officiating Miniſter obliged to wear?

A. Every Miniſter ſaying the publick Prayers, or miniſtring the Sacraments, or other Rites of the Church, ſhall wear a decent and comely Surplice, with Sleeves, to be provided at the Charge of the Pariſh; and ſuch as are Graduates, Hoods ſuitable to their Degrees, which no Miniſter ſhall wear (being no Graduate) under Pain of Suſpenſion: *Can.* 58. And by the Rubrick, ſuch Ornaments of the Church, and of the Miniſters thereof, at all Times of their Miniſtration, ſhall be retained, and be in Uſe as were in this Church of *England*, by the Authority of Parliament, in the ſecond Year of King *Edward* VI. which ſhould ſeem to be underſtood, according to the Alterations made in the *ſecond* Book 5, 6 *Ed.* VI. for the *firſt* Service-Book enjoins, beſides Surplices and Hoods, at the Communion, Albs and Tunicles, and to the Biſhop a Paſtoral-Staff.

Q. In what Place of the Church is the Service to be performed?

A. In ſuch Place as has been accuſtomed, except it ſhall be otherwiſe directed by the Ordinary.

Q. How and at what *Times* is the Service to be performed?

A. The Common Prayer ſhall be ſaid or ſung *diſtinctly and reverently*, upon ſuch Days as are appointed to be kept Holy by the Book of Common Prayer, and their Eves, and at convenient and uſual Times of thoſe Days. And the Curate that miniſtreth in every Pariſh Church or Chapel being at home, and not being otherwiſe reaſonably hindred, ſhall daily ſay the Morning and Evening Prayer, in the Pariſh Church or Chapel where he miniſtreth.

Q. Is the Miniſter obliged to proclaim or publiſh any thing in the Church, during the Time of divine Service, other than what is preſcribed in the Rules of the Common Prayer-Book?

A. No; unleſs enjoined by the King, or the Ordinary of the Place.

Q. What Acts of Parliament and Canons is he obliged to read, and when?

A. The Act of Uniformity, 5, 6 *Ed.* VI. once a Year. The Act for obſerving the 5th of *November*, after the Morning-Service for that Day. The Act for obſerving the 29th of *May*, the Lord's-Day next before. The Act againſt Swearing, 6, 7 *Will.* III. four times a Year, immediately after Morning-Prayer, on the *Sunday* next after the 24th of *June*, 29 *Sept.* 25 *Dec.* and the 25th of *March*, under Pain of 20*s.* Alſo the whole Book of Canons 1603 is to be read once every Year, upon ſome *Sunday* or Holy-day in the Afternoon, before divine Service;

Service; dividing the ſame in ſuch ſort, that the one Half may be read one Day, and the other another Day.

TIT. XIV.

Preaching, Lectures, *and* Homilies, *according to the* CHURCH *of* England.

Q. WHAT Penalty is there upon any Perſon diſturbing a Miniſter in Preaching?

A. Beſides the Forfeiture of 20*l.* by 1 *Will.* and *Mar. c.* 18. the Statute 1 *Mar.* (Seſſ. 2) *c.* 3. is ſtill in Force, which makes it *Impriſonment.*

Q. Is it neceſſary to have a Licence for Preaching?

A. No Deacon ſhall preach, unleſs licenced by the Biſhop; nor a Prieſt, except in the Congregation where he ſhall be lawfully appointed thereto.

Q. What Subſcription is required of Preachers?

A. None ſhall preach, or read Lectures, or catechize, till he hath ſubſcribed, before his Dioceſan, to the three Articles in the 36th Canon, *vid. pag.* 48.

Q. What Penalty is there upon taking Reward for procuring a Licence to preach?

A. Forfeiture of forty Pounds, 31 *Eliz. c.* 6.

Q. What Preaching is required of every beneficed Preacher?

A. He is to preach every *Sunday* at his own Cure, or one near it, if he reſides; if not, he ſhall ſupply by licenſed Preachers, if the Benefice will bear it: But every Pluraliſt ſhall maintain a licenſed Preacher in the Benefice where he doth not uſually reſide. *Can.* 45, &c.

Q. What Reſtraint does the Canon lay upon ſtrange Preachers?

A. No Stranger ſhall be ſuffered to preach, without ſhewing his Licence: And the Churchwardens ſhall take care, that the Names of all Preachers which come to their Church from any other Place, ſhall be noted in a Book for that Purpoſe; wherein every Preacher ſhall ſubſcribe his Name, the Day wherein he preached, and the Name of the Biſhop who licenſed him. *Can.* 51, &c.

Q. What Care is taken to prevent Publick Oppoſition between Preachers?

A. No Preacher ſhall in the Pulpit, particularly or namely of Purpoſe, impugn, or confute any Doctrine delivered by any other Preacher in the ſame Church, or any Church near adjoining, before he hath acquainted the Biſhop of the Dioceſe therewith, and received Orders what to do in that Caſe: And if any do, the Churchwardens, or Party grieved, ſhall forthwith ſignify the ſame to the ſaid Biſhop; and not ſuffer the ſaid Preacher any more to occupy the Place which he hath once abuſed, except he faithfully promiſe to forbear all ſuch Matter of Contention in the Church, until the Biſhop hath taken further Order therein. *Can.* 53.

Q. What

Q. What if * falſe Doctrine be preached in any Cathedral —? Vid. *Append.*

A. It ſhall be notified to the Biſhop by the Dean or Reſidents, by Letters ſubſcribed with ſome of their Hands who heard it. *Can.* 51.

Q. If a licenced Preacher refuſe to conform to the Church of *England* —?

A. He ſhall be admoniſhed by the Biſhop or Ordinary; if after Admonition he does not conform within a Month, his Licence ſhall be void. *Can.* 54.

Q. What muſt they do, who are not licenc'd Preachers, for the Inſtruction and Edification of the People?

A. They ſhall read plainly, and aptly, without gloſſing or adding, the Homilies already ſet forth, or hereafter to be publiſhed by lawful Authority. *Can.* 49.

Q. What Privilege have licenced Preachers by the Statute?

A. None ſhall be admitted to any Benefice with Cure of Souls, of or above the Value of 30*l.* yearly in the King's Books, unleſs he ſhall be a licenſed Preacher, or Batchelor of Divinity, 13 *Eliz. c.* 12.

Q. Have only the Archbiſhops and Biſhops Authority to licence Preachers?

A. Yes, the two Univerſities of *Cambridge* and *Oxford.*

Q. What is required of Lecturers by the Act of Uniformity?

A. Every Lecturer ſhall be licenced under the Seal of the Archbiſhop or Biſhop, and

read the XXXIX Articles in his Preſence, and declare his unfeigned Aſſent to the ſame: Every Lecturer ſhall alſo, the firſt Time he preacheth at his Lecture, read the Common-Prayer, and declare his Aſſent thereto, and continue to do the ſame Monthly, upon Pain of being diſabled till he ſhall conform; and, if he preach while he is diſabled, ſhall ſuffer three Months Impriſonment.

Q. Is it neceſſary that a Lecturer in a Cathedral ſhould read the Common Prayer?

A. No, it is ſufficient to declare his Aſſent and Conſent.

Q. Are Lecturers bound by Canon to read the Common Prayer?

A. Every ſtipendiary Preacher that readeth any Lecture, or catechizeth, or preacheth in any Church or Chapel, ſhall twice, at the leaſt, every Year, read himſelf the Divine Service, upon two ſeveral *Sundays*, publickly, and at the uſual Times, both in the Forenoon and Afternoon, in the Church where he readeth, catechizeth, or preacheth; and ſhall likewiſe as often in every Year adminiſter the Sacraments of Baptiſm (if there be any to be baptized) and of the Lord's-Supper, in ſuch Manner and Form, and with the Obſervation of all ſuch Rites and Ceremonies, as are preſcribed by the Book of Common-Prayer in that Behalf, upon Pain of *Removal* from his Place, by the Biſhop of the Dioceſe, till he ſhall ſubmit. The ſame is required of beneficed Preachers, upon Pain of *Suſpenſion*.

TIT.

TIT. XV.

Orthodox Preaching, according to Scripture, Creeds and Articles.

Q. WHAT only is to be believed as an Article of Faith, or as neceſſary to Salvation?

A. Nothing but what is read in holy Scripture, or may be proved thereby. *Art.* 6.

Q. What Creeds does the Church of *England* receive and believe?

A. The three Creeds, *Nice* Creed, *Athanaſius*'s Creed, and that which is commonly called the *Apoſtles* Creed; affirming that they ought thoroughly to be received and believed, for that they may be proved by moſt certain Warrants of Holy Scripture. *Art.* 8.

Q. Wherein is the true Doctrine of the Church of *England* contain'd?

A. In the Articles commonly called the XXXIX *Articles*, which were mainly founded upon a Body of Articles compiled and publiſhed in the Reign of King *Edward* VI. and were not only paſſed in Convocation, and confirmed by Royal Authority, in the Year 1562, but were alſo ratified *anew* by Queen *Elizabeth*, and afterwards by King *James* I.

Q. What Penalty does the *Statute* inflict upon the Impugners of the XXXIX Articles?

A. To

A. To preach any thing contrary to the Doctrine of them, and to perſiſt in it, or after Recantation to maintain or affirm the like again, ſhall be Deprivation, 13 *Eliz. c.* 2.

Q. What Cenſure does the *Canon* inflict for the ſame Offence?

A. Excommunication *ipſo facto*, upon any that ſhall affirm, that they are in any Part ſuperſtitious or erroneous, or ſuch as he may not with a good Conſcience ſubſcribe unto. *Can.* 5.

TIT. XVI.

Preaching of heretical Doctrines, and of HERESY *and* HERETICKS.

Q. WHAT has been allowed by the Statute Law to be Hereſy ſince the Reformation?

A. In the Times of Popery every thing was adjudged Hereſy that the Church of *Rome* thought fit to call by that Name, how far ſoever in its own Nature from being *fundamental*, and how contrary ſoever to the Goſpel and the antient Doctrine of the Catholick Church. But in the Act 1 *Eliz. c.* 1. intitled, *An Act to reſtore to the Crown the antient Juriſdiction over the Eſtate Eccleſiaſtical, &c.* the Power which the *Eccleſiaſtical Commiſſioners* had thereby given them to correct Hereſy, *&c.* was with this *Limitation*, That they ſhould have no Authority or Power to adjudge any Matter

Matter or Cauſe to be Hereſy, but only ſuch as heretofore have been determined, ordered, or adjudged to be Hereſy by the Authority of the Canonical Scriptures; or by the firſt four general Councils, or any of them, or by any other general Council, wherein the ſame was declared Hereſy by the expreſs and plain Words of the ſaid Canonical Scriptures: or ſuch as hereafter ſhall be ordered, judged, or determined to be Hereſy by the High Court of Parliament, with the Aſſent of the Clergy in their Convocation.

Q. Is this ſtill in Force?

A. This Act, ſo far as it concerneth the High Commiſſion Court, being repealed by 16 *Car.* I. it follows, that this Branch, which extended only to that Court, is alſo repealed: *But* * (ſaith my Lord *Coke*, while that Commiſſion ſtood) *albeit this Proviſo extendeth only to the High Commiſſioners; yet, ſeeing in the High Commiſſion there be ſo many Biſhops, and other Divines, and learned Men, it may ſerve for a good Direction to others, eſpecially to the Dioceſan, being a ſole Judge in ſo weighty a Cauſe.*

Q. What was the antient Puniſhment of Hereſy?

A. By Stat. 2 *Hen.* IV. *c.* 15. Hereticks, upon Conviction before the Ordinary, were deliver'd to the ſecular Arm and burnt; but by 29 *Car.* II. *c.* 9. it was enacted, That the Writ *de Hæretico comburendo*, with all Proceſs and Proceedings thereupon, and all Puniſhment

ment by Death, in Pursuance of any Ecclesiastical Censures, should be from thenceforth utterly taken away and abolished.

Q. Does this Act extend to abridge, or take away the Jurisdiction of Protestant Archbishops or Bishops, or any other Judges of any Ecclesiastical Courts, in Cases of Atheism, Blasphemy, Heresy, or Schism, and other damnable Doctrines and Opinions?

A. No, there is a special Proviso in it, that they may proceed to punish the same, according to his Majesty's Ecclesiastical Laws, by Excommunication, Deprivation, Degradation, and other Ecclesiastical Censures not extending to Death, in such Sort, and no other, as they might have done before: So that upon abrogating of the ancient Statutes made against Hereticks, the Cognizance of Heresy, and the Punishment of Hereticks, return'd into its ancient Channel and Bounds, and now belongs to the Archbishop, as Metropolitan of the Province, and to every Bishop within his own proper Diocese, who are to punish only by Ecclesiastical Censures.

But as no Person can be indicted or impeach'd for Heresy before any *temporal* Judge, or other that hath temporal Jurisdiction; so, if a Heretick be convicted of Heresy, and *recant* it, he may not (* as has been resolv'd) be punished by the Ecclesiastical Law.

Q. Has not the Convocation a Power to convict and punish Hereticks?

A. The Convocation had once an *undoubted* Right to convict and puniſh Hereticks in a ſynodical Manner: How far it doth ſtill retain, or not retain that Authority, has of late been Matter of Diſpute, and hath not yet receiv'd a *Judicial* Determination.

Q. Is there no Civil Penalty inflicted by the Statute upon ſome particular Hereſies?

A. Yes, by the Act 9, 10 *W.* III. *c.* 32. for the more effectual ſuppreſſing of Blaſphemy and Profaneneſs; which ſee, *Tit.* XLVII.

TIT. XVII.

The Sacraments of the CHURCH *in general.*

Q. HOW many Sacraments does the Church of *England* acknowledge?

A. Two only, as generally neceſſary to Salvation, Baptiſm, and the Lord's Supper, rejecting the other five which the *Romaniſts* hold; that is to ſay, Confirmation, Penance, Orders, Matrimony, and Extreme Unction, as having no viſible Sign ordained of God.

Q. What is the Nature of the Sacraments?

A. They be not only Badges or Tokens of Chriſtian Mens Profeſſion, but rather they be certain ſure Witneſſes and effectual Signs of Grace, and God's good Will towards us, by the

the which he doth work invisibly in us, and doth not only quicken, but also strengthen and confirm our Faith in him. *Art.* 25.

Q. Have they this wholsome Effect and Operation in all that receive them?

A. In such only as worthily receive them; but they that receive them unworthily, receive to themselves Damnation, as St. *Paul* saith. *Ibid.*

Q. Does the Unworthiness of the Ministers hinder the Effects of the Sacraments?

A. No; forasmuch as they do not minister the same in their own Name, but in Christ's, and by his Commission and Authority. *Art.* 26.

Q. Are the Sacraments to be refused at the Hands of unpreaching Ministers?

A. No; upon Pain of Suspension and Excommunication. *Can.* 57.

Q. May the Sacraments be sold for Money?

A. Priests demanding Money for Sacraments, by a Constitution of *Otho*, shall be depriv'd of Benefice, and suspended from Office.

TIT. XVIII.

The Sacrament of BAPTISM.

Q. WHAT does the Church of *England* hold concerning Baptism?

A. That it is not only a Sign of Profession, but of Regeneration or new Birth, whereby,

as by an Inſtrument, they that receive Baptiſm rightly, are grafted into the Church, the Promiſes of Forgiveneſs of Sins, and of our Adoption to be the Sons of God by the Holy Ghoſt, are viſibly ſign'd and ſeal'd, Faith is confirmed, and Grace increaſed by Virtue of Prayer to God. *Art.* 27.

Q. Is the Baptiſm of young Children to be retained in the Church?

A. Yes, as moſt agreeable with the Inſtitution of Chriſt. *Ibid.*

Q. Are Miniſters bound to baptize Children that are brought to them to Church?

A. Yes, upon Pain of Suſpenſion for three Months. *Can.* 68.

Q. What Notice ought the Miniſter to have beforehand?

A. Convenient Notice either over Night, or in the Morning, before Morning-Prayer.

Q. When is the proper Time of Baptizing?

A. On *Sundays*, or Holy-days, after the laſt Leſſon, at Morning or Evening Prayer, as the Curate at his Diſcretion ſhall appoint.

Q. How is Baptiſm to be perform'd?

A. In ſuch Manner and Form as is preſcribed in the Book of Common-Prayer.

Q. Can a Parent be admitted as a Godfather for his own Child?

A. No: Nor ſhall any Perſon be admitted as a Godfather or Godmother to any Child at Chriſtening or Confirmation, before the ſaid Perſon ſo undertaking hath received the Holy Communion. *Can.* 29.

Q. Can

Q. Can the Name of a Child be chang'd after Baptiſm?

A. By a Conſtitution of Archbiſhop *Peckham*, wanton Names being given in Baptiſm, eſpecially to Children of the Female Sex, ſhall be chang'd by the Biſhop at Confirmation, for others more decent; which Name ſo chang'd, ſhall be reputed the legal Name.

Q. What Ceremonies does the Church retain in Baptiſm?

A. The Church ſtill retains the Sign of the Croſs, and explains the lawful Uſe of it in Baptiſm, in the 30th Canon; but the Popiſh Remains of *Leading* into the Church, *Exorciſing*, *Criſom*, and *Anointing*, in 2 *Ed.* VI. are laid aſide.

Q. Does the Church allow of private Baptiſm?

A. In Caſe of Weakneſs, or Danger of Death of any Infant.

Q. By whom is private Baptiſm to be adminiſter'd?

A. There was ſome Ambiguity in the Rubrick of *Ed.* VI's Book, concerning the Perſons by whom private Baptiſm might be adminiſter'd; but that has been ſince, and ſtands now, ſufficiently clear'd by the preſent Rubrick, which confines it to the Miniſter of the Pariſh, or, in his Abſence, to any other *lawful Miniſter* that can be procured.

Q. What if the Child die unbaptiz'd thro' the Miniſter's Neglect?

A. He

A. He ſhall be ſuſpended for three Months; and before his Reſtitution, ſhall acknowledge his Fault, and promiſe before his Ordinary, that he will not willingly incur the like again. *Can.* 69.

Q. Upon what Account was the Office for the Baptiſm of ſuch as are of riper Years added to the Common-Prayer?

A. Becauſe it was become neceſſary by the Growth of Anabaptiſm, and might be uſeful for the baptizing of Natives in our Plantations. *Preface to the Common-Prayer.*

Q. Does a Slave by Baptiſm acquire Manumiſſion?

A. That hath been a Point debated * in the Court of *King's-Bench* (*Vide* the *Codex*) but not directly determin'd; but it was ſaid, that if Baptiſm ſhould be accounted Manumiſſion, it would very much endanger the Trade of the Plantations, which cannot be carried on without the Help and Labour of theſe Slaves; for the Miniſters are bound to baptize them, as ſoon as they can give a reaſonable Account of the Chriſtian Faith; and, if that would make them free, then few would be Slaves. At the ſame Time, it ſeemed to be taken for granted, that if the Slave had been baptized with the Maſter's Conſent, Manumiſſion would have follow'd; which may be gather'd from the Manner of ſtating the Queſtion, Whether Baptiſm, *without the Privity of the Lord*, will amount to a Manumiſſion?

TIT. XIX.

Publick CATECHISING *and* CONFIRMATION.

Q. WHAT is the Minister's Duty with regard to Catechising?

A. Every Minister is, *by the 59th Canon*, to catechise every *Sunday* and Holy-day, *before Evening-Prayer*; but *by the Rubrick*, after the second Lesson at Evening-Prayer, so many of the Children of his Parish sent unto him, as he shall think convenient.

Q. What Punishment is there for the Neglect of Catechising?

A. All Fathers and Mothers, Masters and Mistresses, shall cause their Children, Servants and Apprentices, which have not learn'd the Catechism, to come to Church at the Time appointed, obediently to hear and to be order'd by the Minister, till they have learned the same. If any of them shall neglect their Duty herein, as the one Sort, in causing them to come, and the other in refusing to learn, let them be suspended by their Ordinaries, if they be not Children, and if they so persist by the Space of a Month, excommunicated. *Can.* 59.

Q. What if the Minister neglect his Duty herein?

A. Let

A. Let him be ſharply reproved upon the firſt Complaint, for the ſecond Offence ſuſpended, for the third excommunicated, till he will reform. *Ibid.*

Q. How often are Biſhops bound to hold Confirmations?

A. Every three Years at their Viſitations, or the next Year after, in Caſe of perſonal Inability.

Q. What is requir'd of thoſe who come to be confirm'd?

A. That they be at leaſt able to render an Account of their Faith, according to the Church Catechiſm.

Q. Is Confirmation neceſſary before Communion?

A. None ſhall be admitted to the Holy Communion, until ſuch Time as he be confirmed, or be ready and deſirous to be confirm'd. *Rubr.*

Q. May Confirmation be repeated?

A. No.

TIT. XX.

The Sacrament of the LORD'S SUPPER.

Q. WHAT Penalty is inflicted by Statute upon Contemners of the Sacrament of the Lord's Supper?

A. To deprave, deſpiſe, and contemn it, by any contemptuous and reviling Words, is

by 1 *Ed.* VI. *c.* 1. Impriſonment, and Fine at the King's Will.

Q. May the Miniſter deny the Sacrament to whom he pleaſes?

A. He ſhall not, without a lawful Cauſe, deny the Sacrament to any Perſon, that will devoutly and humbly deſire it, 1 *Ed.* VI. *c.* 1. but he may and muſt repel thoſe who are open and evil notorious Livers; or have done any Wrong to their Neighbours by Word or Deed, ſo that the Congregation be thereby offended; or live in Malice or Hatred; provided he certify the ſame to the Ordinary within fourteen Days. *Rubr.*

Q. What notorious Crimes are ſpecified in the Canons, for which Perſons ſhall not be admitted to the Communion till they be reform'd?

A. Adultery, Whoredom, Inceſt, Drunkenneſs, Swearing, Ribaldry, Uſury, or any other Uncleanneſs and Wickedneſs of Life. Alſo Churchwardens, who refuſe to make Preſentment according to their Oath, ſhall be refuſed Communion: Nor ſhall any Miniſter adminiſter but to ſuch as kneel, under Pain of Suſpenſion; nor to any that refuſe to be preſent at Prayers, or who are Depravers of the Common-Prayer, or XXXIX Articles, or Form of Conſecration and Ordination, or of the King's Supremacy, except every ſuch Perſon ſhall firſt acknowledge to the Miniſter, before the Churchwardens, his Repentance for the ſame, and promiſe by Word (or Writing, if he can write) that

that he will do ſo no more: Nor laſtly, to Strangers from other Pariſhes. *Can.* 26, 109, 27, 28.

Q. How often is the Communion to be receiv'd by every Pariſhioner in a Year?

A. Three times at leaſt, whereof *Eaſter* is to be one; and all Perſons of the Age of Sixteen, not communicating at *Eaſter*, ſhall have their Names exhibited, by the Miniſter and Churchwardens, to the Biſhop or his Chancellor, within forty Days after.

Q. What Number is requir'd to celebrate a Communion?

A. There ſhall be no Communion except there be three at leaſt, beſides the Prieſt, to communicate: But in Communion with the Sick, in the Time of Plague or contagious Sickneſs, the Miniſter alone may communicate with the ſick Perſon.

Q. Who are qualified to celebrate the Communion?

A. None but Prieſts at the leaſt. If any Perſon preſume to conſecrate and adminiſter before ſuch Time as he ſhall be ordained Prieſt, he ſhall forfeit * for every Offence 100*l.* and be diſabled from being a Prieſt one whole Year.

Q. Where is the Communion-Table to be placed at the Time of Adminiſtration?

A. In the Body of the Church, or in the Chancel, in ſuch Sort, as the Miniſter may be more conveniently heard of the Communicants, and the Communicants alſo more con-

veniently, and in more Number, may communicate with the Miniſter.

Q. If the Miniſter and Churchwardens diſagree about diſpoſing of the Money given at the Offertory ——?

A. It ſhall be diſpoſed of as the Ordinary ſhall appoint.

Q. Who ſhall provide the Bread and Wine?

A. The Curate and Churchwardens, at the Charge of the Pariſh. *Rubr.*

Q. What does the Church of *England* hold concerning the Lord's Supper?

A. That it is not only a Sign of the Love that Chriſtians ought to have among themſelves one to another; but rather it is a Sacrament of our Redemption by Chriſt's Death: Inſomuch that to ſuch as rightly, worthily, and with Faith receive the ſame, the Bread which we break is a partaking of the Body of Chriſt; and likewiſe the Cup of Bleſſing is a partaking of the Blood of Chriſt. *Art.* 28.

Q. What does the Church of *England* hold concerning Tranſubſtantiation, or the Change of the Subſtance of Bread and Wine?

A. That it is repugnant to the plain Words of Scripture, overthroweth the Nature of a Sacrament, and hath given Occaſion to many Superſtitions. *Ibid.*

Q. Why does the Church injoin Kneeling at the Time of Receiving?

A. Not

A. Not by Way of Adoration, but as a Token of Humility and Gratitude, and for avoiding of ſuch Profanation and Diſorder, in the Holy Communion, as might otherwiſe enſue.

Q. How often ſhall there be Communion in Cathedral and Collegiate Churches and Colleges?

A. Every *Sunday* at leaſt, without reaſonable Cauſe to the Contrary. *Rubr.*

Q. May the Communion be adminiſter'd in private Houſes?

A. Not except it be in Times of Neceſſity, upon Pain of Suſpenſion for the firſt Offence, and Excommunication for the ſecond. *Can.* 71.

Q. What Houſes are in this Caſe by the Canon reputed private Houſes?

A. Houſes wherein are no Chapels dedicated and allow'd by the Eccleſiaſtical Laws of this Realm. *Ibid.*

TIT. XXI.

The two Popiſh Sacraments of PENANCE *and* EXTREME UNCTION.

Q. IS Penance properly a Sacrament?

A. No, inaſmuch as it hath neither any *outward* Sign inſtituted by Chriſt, nor any *inward* Grace particularly annex'd to it. If publick, it's confeſſedly a Part of Church Diſcipline; if private, it is only the Application

of the Powers of the Keys to a particular Perſon for his Comfort and Correction.

Q. Is Confeſſion to a Prieſt *neceſſary* in order to Forgiveneſs of Sin?

A. If a *true Penitent* receive *Abſolution* from his Miniſter, God ratifies the Sentence, and forgives the Sin. But ſo God would have done, had neither any *Confeſſion* been made *to*, or *Abſolution* received *from* him. And that the Sin is *forgiven*, is owing to the Mercy of God, upon the Repentance of a Sinner, and not to be aſcribed to the Prieſt's Sentence.

Q. But may it not be *expedient* in ſome Caſes, tho' not neceſſary, for a Man to confeſs his ſecret and hidden Sins to the Miniſter?

A. Yes, for the unburthening of his Conſcience, and to receive ſpiritual Conſolation and Eaſe of Mind from him; and in that Caſe, the Miniſter is ſtraightly charg'd and admoniſhed (by the 113th Canon, agreeably to former Conſtitutions) that he do not at any Time reveal and make known to any Perſon whatſoever, any Crime or Offence, ſo committed to his Truſt and Secrecy, (except they be ſuch Crimes as by the Laws of this Realm his own Life may be call'd into Queſtion for concealing the ſame) under Pain of Irregularity. There is alſo this prudent Caution laid down in a Conſtitution of Archbiſhop *Walter*, *Temp. Edv.* II. *Item Caveant Sacerdotes, ne peccata a pœnitentibus inquirant, aut nomina perſonarum cum quibus peccaverint, ſed circumſtantias tantum, & qualitatem peccati; cum ſcriptum*

ſcriptum ſit, Deus, vitam meam nunciavi tibi, & non alterius; & *propria debet eſſe Confeſſio, & non aliena.*

Q. Is Extreme Unction a Sacrament?

A. No, inaſmuch as it was neither inſtituted by Chriſt, nor hath any ſpiritual Effects annex'd to it: 'Tis indeed nothing but an abſurd Superſtition, built upon a groſs Miſinterpretation of a ſingle Paſſage in St. *James*'s Epiſtle; which Paſſage relates not at all to the Salvation of the Sick in the World to come, but to their miraculous Recovery in this: In order to which, Direction is there given for anointing the Sick with Oil, that the Lord may *raiſe him up*, and his Sins be forgiven him.

TIT. XXII.

MATRIMONY; *how it is duly Solemnized and Diſſolved.*

Q. WHAT Matrimony is to be reputed unlawful?

A. Such only as is within the *prohibited* Degrees, or *otherwiſe contrary* to the Law of God.

Q. What are the *prohibited* Degrees?

A. They are particularly expreſſed in a Table ſet forth by Authority in the Year of our Lord 1563, which is, or ought to be, publickly ſet up and fixed in every Church, at the Charge of

of the Pariſh. *Vide* the *Appendix.* Theſe Degrees are either of Conſanguinity or Affinity, and by the Table it appears in general, that

A Man may not marry his	A Woman may not marry with her
Grandmother,	Grandfather,
Aunt,	Uncle,
Mother,	Father,
Daughter,	Son,
Siſter,	Brother,
Grandaughter,	Grandſon,
Niece,	Nephew,

Either by Marriage, or by Blood, in any Senſe whatever.

Q. What Rules are laid down for the better underſtanding of *prohibited Degrees?*

A. I. That Marriages in the aſcending and deſcending Line, *i. e.* of Children, with their Father, Grandfather, Mother, Grandmother, and ſo upwards, are prohibited *without Limit.*

II. That there are ſeveral Degrees, which altho' not expreſly nam'd in the *Levitical* Law, are yet prohibited by that, and by our Laws, *Paritate rationis.*

III. That Conſanguinity and Affinity (letting and diſſolving Marriages) is contracted, as well in them and by them which be of Kindred by the one Side, as in and by them which be of Kindred by both Sides.

IV. Con-

IV. Conſanguinity and Affinity (letting and diſſolving Marriage) is contracted as well by unlawful Company of a Man and Woman, as by lawful Marriage.

V. That the Relation ſtill continues after the Deceaſe of the Party related.

Q. What Rules are there to know the Degrees of Kindred?

A. Kindred is diſtinguiſhed by Lines, either the *Right* Line, or the *Collateral*; to find the Difference of Degrees in both which, the *Canon* Law lays down the two following Rules.

Q. What is the Rule in the right Line?

A. * *In the right Line there are ſo many Degrees as there are Perſons begotten, not reckoning the common Stock from which all deſcended.* For Example; there is the Grandfather, Father, and Grandſon: Now (not computing the Grandfather) the Father being born, makes one Degree; the Grandſon being begotten by the Father, makes the ſecond Degree---

Q. What is the Rule in the Collateral Line?

A. In whatſoever Degree the Perſons are diſtant from the common Stock, in the ſame Degree they are diſtant from each other. Here my Brother and I are diſtant but one Degree? for we are diſtant but one Degree from our Father, the common Stock from whence we deſcend: Here alſo from my Uncle's Son I am diſtant but two Degrees; becauſe we are diſtant but two Degrees from the Grandfather, the common Stock where we muſt fix our Computation.

Q. What

Q. What is the Method of Computation, where the Degrees are *unequal*; that is, where one is nearer to the common Stock than the other?

A. The Rule is, *In whatsoever Degree the remotest Person is distant from the common Stock, in such a Degree the Persons are distant from each other:* So, I and the Grandchild of my Uncle are distant only in the *third* Degree; for the Grandchild of my Uncle is distant but three Degrees from my Grandfather, which is our nearest common Root.

Q. Does the Civil Law compute the Degrees of Kindred in the same manner as the Canon Law does?

A. They agree as to the *Right* Line, but as to the *Collateral* there is a Disagreement. For by the *Civil* Law, the Rule to find the Difference is the *same* in the *collateral* as in the *right Line, viz.* That there are so many Degrees, as there are Persons begotten, not reckoning the common Stock. So that by the *Civil* Law, I differ from my Brother two Degrees, and from my Uncle's Son I am in the fourth Degree, from his Grandson in the fifth.

Q. Does the *common* Law of *England* follow the Computation of Degrees according to the *Civil* Law, or according to the *Canon* Law?

A. According to the *Canon* Law.

Q. Whence seems to have arose the vulgar Mistake, that First-Cousins may marry, but Second-Cousins cannot?

A. It

A. It might probably be from confounding the Civil and Canon Law together; for by the *Civil* Law *Firſt* Couſins were allowed to marry, by the *Canon* Law neither *Firſt* nor *Second* could, for the Prohibition of the Canon Law extended to the *Fourth* Degree: Nay, the more antient Prohibition of the Canon Law was to the *Seventh* Generation; till in the fourth Counſel of *Lateran*, which was held in the Year of our Lord 1215, it was reduced to the *Fourth* Degree: Which Limitation was alſo the Rule of the Church of *England*, till 32 *Hen.* VIII. *c.* 38. which declares all Marriages lawful that are not prohibited by the Law of God.

Q. What if any Perſons marry within the prohibited Degrees—?

A. The Marriage ſhall be adjudged inceſtuous, and unlawful; and conſequently ſhall be diſſolved, as void from the Beginning: And the Parties ſo married, ſhall by Courſe of Law be ſeparated.

Q. In what *other* Reſpect may Marriages be contrary to the Law of God, beſides that of being within the *Levitical* Degrees?

A. Perſons pre-contracted to one another, are prohibited by the Law of God to marry againſt ſuch Pre-contract; and ſo Perſons of natural Impotency may not marry at all; ſince if Marriage anſwer not the End of avoiding Fornication, *&c.* it is null: So likewiſe where there can be no Conſent, or the Perſon is *under* the Age of Conſent, or where a Woman hath

hath a Husband living, or a Man a Wife living, *&c.*

Q. What Penalty is there for carrying away Maid, Wife, or Widow Woman againſt her Will, unlawfully, that hath Lands or Goods, or is an Heireſs?

A. By 3 *Eliz. c.* 9. 'tis Felony, without Benefit of Clergy; if ſhe be ſo taken as to be married to the Miſdoer, or *deflower'd* by him: If the Woman has nothing, and was neither marry'd nor deflower'd, it is not within the Statute.

Q. Can the Woman be admitted an Evidence againſt the Miſdoer?

A. * Yes, becauſe ſuch Marriage was founded in Force and Terror; and becauſe, as ſuch Caſes are generally contrived, ſo heinous a Crime would go unpuniſhed, unleſs the Teſtimony of the Woman ſhould be received.

Q. Are the Receivers within this Statute?

A. * The Receivers of the Woman are *Principals*, but the Receivers of them who took the Woman *Acceſſories*.

Q. What Penalty is there for taking away any Maid or Woman-Child under Sixteen, without the Conſent of the Father or Guardian?

A. * Two Years Impriſonment, or a Fine by the Court of *King's-Bench*.

Q. What if the Perſon taking her away deflower her; or by ſecret Arts, Letters, Meſſuages, *&c.* contract Matrimony, without the like Conſent?

A. 'Tis five Years Impriſonment, or Fine: And if the Woman agree to ſuch Contract, the next of Kin to her, to whom the Inheritance ſhould deſcend, ſhall enjoy all her Lands during Life, and then they ſhall remain to the right Heir.

Q. What Age does the Canon require for Conſent?

A. None under the Age of one and twenty Years compleat ſhall contract themſelves, without Conſent of Parents or Guardians.

Q. Is ſuch Conſent neceſſary when Banns are publiſhed?

A. Yes; if the Parties be under the Age of Twenty-one, the Parents or Governors of them ſhall either perſonally, or by ſufficient Teſtimony, ſignify to the Miniſter their Conſents given to the ſaid Marriage.

Q. What Penalty is there for having two Wives or two Husbands at the ſame Time?

A. * 'Tis Felony; except the Husband or Wife ſhall be continually remaining beyond Seas for ſeven Years, or abſent him or herſelf by the Space of ſeven Years together in any Part of his Majeſty's Dominions, the other not knowing him or her to be living within that Time?

Q. Can the firſt Husband or Wife be produced at the Trial as a Witneſs to prove the firſt Marriage?

A. * A Wife againſt a Husband, or a Huſband againſt a Wife, can in no Caſe be admitted to give Evidence, excepting Treaſon;

or

or except where the Marriage was founded in Force and Terror, and is the Matter in Queſtion.

Q. Are Perſons lawfully divorced ſubject to the Penalty?

A. * A Divorce either *a Vinculo* or a *Thoro & Menſa* is a Diſcharge from the Felony.

Q. Is it a former Marriage within the Statute, if either Party were under Age of Conſent?

A. No: * For from ſuch Marriages, the Parties may afterwards diſagree at the Age of Conſent; the Man at Fourteen, the Woman at Twelve.

Q. What Penalty is upon the Miniſter for marrying without Banns or Licence?

A. Suſpenſion for three Years; and by 10 *Ann. c.* 19. Forfeiture of 100*l.* and if the Offender be a Priſoner in any private Gaol, he ſhall be removed to the County-Gaol, and charged in Execution with the ſaid Penalty: And if any Gaoler or Keeper of any Priſon ſhall be privy to, or knowingly permit any ſuch Marriage, he ſhall alſo forfeit 100*l.*

Q. When muſt the Banns be publiſhed, and where?

A. Three ſeveral *Sundays* or *Holy-days*, in the Time of divine Service, as the Rubrick directs, in the Pariſh Church or Chapels where the Parties dwell.

Q. What is the Canonical Hour for Marriage?

A. Between Eight and Twelve in the Forenoon.

Q. Where ought Marriage to be celebrated?

A. In the Pariſh Church or Chapel where one of the Parties dwelleth?

Q. Who have Authority to grant Licences?

A. Only ſuch as have Epiſcopal Authority, or the Commiſſary for Faculties, Vicars General of the Archbiſhops and Biſhops, *ſede plena* or *ſede vacante*, the Guardian of the Spiritualties, or Ordinaries exerciſing of Right Epiſcopal Juriſdiction, in their ſeveral Juriſdictions reſpectively.

Q. To whom are Licences regularly to be granted?

A. To ſuch Perſons only as be of good State and Quality, and that upon good Caution and Security taken.

Q. What Conditions ſhall be contained in that Security?

A. 1. That there is no Impediment of Precontract, Conſanguinity, Affinity, or other lawful Cauſe to hinder the ſaid Marriage. 2. That there is no Controverſy or Suit depending in any Court, before any Eccleſiaſtical Judge, concerning ſuch Pre-contract. 3. That they have obtained thereunto the expreſs Conſents of their Parents, if they be living; otherwiſe, of their Guardians or Governors. Laſtly, That they ſhall celebrate the ſaid Matrimony publickly in the Pariſh Church or Chapel where

one of them dwelleth, and in no other Place, and that, between the Hours of Eight and Twelve in the Forenoon.

Q. What further Care is taken to prevent all Fraud and Colluſion in obtaining of Licences?

A. 'Tis ordered, that before the granting of any Licence, it ſhall appear to the Judge by the Oath of two ſufficient Witneſſes, one of them to be known either to the Judge himſelf, or to ſome other Perſon of good Reputation then Preſent, and known likewiſe to the Judge, that the expreſs Conſent of the Parents, or Parent if one be dead, or Guardians of the Parties, is thereunto had and obtained: And further, that one of the Parties Perſonally ſwear, that he believeth there is no Impediment nor Suit.

Q. Is it neceſſary for Perſons in Widowhood to have Conſent of Parents?

A. No.

Q. What Penalty is upon the Officer granting Licence offending in the Premiſſes?

A. Six Months Suſpenſion from the Execution of his Office, and every ſuch Licence or Diſpenſation ſhall be held void, and the Parties marrying ſhall be ſubject to ſuch Puniſhments as are appointed for clandeſtine Marriages.

Q. What Stamp is required for a Licence?

A. It muſt be upon a ſingle five Shilling Stamp.

Q. May Marriage be ſolemnized at all times of the Year?

A. By the old *Romiſh* Ritual Marriage was prohibited at certain Times, *viz.* from *Advent-Sunday* till *Twelfth-Tide*, from *Septuageſima-Sunday* till *Low-Sunday*, and from *Rogation* to *Trinity-Sunday*: And this Diſtinction of Times hath been obſerved ſince the Reformation, and is ſtill obſerved by ſome; but there are no ſuch Prohibitions expreſſed; or plainly ſuppoſed in our Canons or Conſtitutions.

Q. Is it ſufficient to defer the Solemnization, that any Perſon on the Day of Marriage *alledges* an Impediment why the Parties may not be coupled together by God's Law, or the Laws of this Realm?

A. No; he muſt be bound and ſufficient Sureties with him to the Parties, or elſe put in a Caution to the full Value of ſuch Charges as the Perſons to be married do thereby ſuſtain, to *prove his Allegation.*

Q. Are Prieſts obliged by the Law of God to abſtain from Marriage?

A. No; 'tis lawful for them, as for all other Chriſtian Men, to marry at their own Diſcretion, as they ſhall judge the ſame to ſerve better to Godlineſs. *Art.* 32.

Q. How is Marriage diſſolved?

A. By the Death of Husband or Wife, and by Divorce.

Q. Is the ſole Confeſſion of the Parties ſufficient for a Divorce?

A. No; there must be Deposition of Witnesses, and other lawful Proofs and Evictions.

Q. How many Kinds are there of Divorce?

A. Two: Separation *a Thoro & Mensa*, and Separation *a Vinculo.*

Q. What is Separation *a Thoro & Mensa*?

A. Separation from Bed and Board: And this is in Cases of Adultery, Cruelty, *&c.* in which the Marriage, having been originally good is not dissolved; * nor doth it bar the Wife of her Dower, nor bastardize the Children, but intitles her to *Alimony*, which the Ecclesiastical Court assigns in Proportion to the Circumstances and Condition of her Husband.

Q. What is Separation *a Vinculo?*

A. That which annuls or dissolves the very Bond of Matrimony; as in Cases of Precontract, or Consanguinity, or Affinity, within the Degrees prohibited: Also * of Impuberty, or Frigidity; where the Marriage of itself was meerly void *ab initio*, and the Sentence of Divorce only *declaratory* of its being so.

Q. What are the Effects of that original Voidance and Nullity?

A. * The Wife is barred of Dower, and the Issue is illegitimate, and the Persons so divorced may marry any others; nay, in case of Divorce for Precontract, the Person before contracted is bound, by the Decree of the Spiritual Court, to marry the Person with whom the first Contract was made.

Q. After Divorce *a Thoro & Menſa* may not the Parties marry any other?

A. No, not during each other's Life; nor ſhall the Sentence of Divorce be pronounced, till they have given Security to the Court that they will not marry.

Q. May not the innocent Party, in caſe of Adultery, marry again?

A. No; by the Doctrine of the Canon Law, and the antient Conſtitutions of the *Engliſh* Church, grounded upon two remarkable Texts of Scripture, *Mark* x. 11. and 1 *Cor.* vii. 11. But becauſe our Saviour in another Place prohibiting Divorces and new Marriages thereon, ſpecially excepts the Caſe of Fornication, it ſeems unreaſonable that the Innocent ſhould ſuffer for the Crime of another; and upon this Principle ſeveral Acts of Parliament, for the Divorce of particular Perſons in the Caſe of Adultery, have expreſly allowed a Liberty to the innocent Perſon of marrying again.

Q. What Penalty lies upon the Judge giving Sentence of Divorce againſt the Canons?

A. He ſhall be ſuſpended from the Exerciſe of his Office a whole Year, and the Sentence of Separation ſhall be void. *Can.* 108.

TIT. XXIII.

Visitation of the Sick, and Burial of the Dead.

Q. WHAT is the Minister's Duty when any of his Parishioners is dangerously sick?

A. He shall resort unto him or her (if the Disease be not known, or probably suspected to be Infectious) to instruct and comfort them in their Distress, according to the Order of the Common-Prayer, or as he shall think most needful and convenient. *Can.* 67.

Q. May the Minister refuse or delay to bury any Corpse, that is brought to the Church or Church-yard, convenient Warning being given him thereof before?

A. No; (except the Party deceased were denounced Excommunicate *Majori Excommunicatione*, for some grievous and notorious Crime, and no Man able to testify of his Repentance, or were unbaptized, or had laid violent Hands upon himself,) upon Pain of Suspension for three Months. *Can.* 68.

Q. Are there any other Cases in which Christian Burial was antiently denied?

A. Yes. Particularly, 1. To Hereticks, 2. Persons not receiving the Holy Sacrament, at least at *Easter*. And, 3. Persons kill'd in Duels, Tilts, or Tournaments.

Q. Is

Q. Is there any Fee due for Burial?

A. * A Fee for Burial may be due by *Cuſtom*; and where it is ſo, belongs to the Miniſter of the Pariſh where the Deceaſed heard Divine Service, and received Sacraments, whereſoever the Corpſe be buried.

Q. Upon what does the Proportion of the Burial Fees depend?

A. The Proportion of Fees due for the Burial of Perſons, whether to Incumbent or Churchwardens, whether for burying *in* or *out* of the Pariſh, depends upon the particular *Uſage* and *Cuſtom* of each Pariſh reſpectively.

Q. May a Perſon be buried in the Church, or any Part of it, without Conſent of the Incumbent?

A. * No; unleſs a Burying-Place within the Church is preſcrib'd for, as belonging to a *Manor*-Houſe.

Q. Upon what Account does this *Right of giving Leave* belong to the Incumbent?

A. It belongs to him, not as having the Freehold, at leaſt not in that reſpect alone, but in his general Capacity of Incumbent, and as the Perſon whom the Eccleſiaſtical Laws have appointed the Judge of the Fitneſs or Unfitneſs of this or that Perſon, to have the Favour of being buried in the Church.

Q. May Monuments, Coat-Armour, and other Enſigns of Honour ſet up in Memory of the Deceaſed, be removed at the Pleaſure of the Ordinary or Incumbent?

A. * No: On the Contrary, if either they, or any

other Person, shall take away, or deface them, when set up with the Consent of the Ordinary, the Person who set them up shall have an Action against them during his Life; and after his Death the Heir of the Deceased shall have the same.

Q. Can a Corpse once buried be taken up or removed?

A. * Not without *Licence* from the Ordinary.

Q. What is the Import of the * Acts for burying in Woollen?

A. 'Tis enacted, That no Person (except dying of the Plague) shall be buried in Sheet, Shirt, Shift, or Shroud, or any thing whatever, made or mingled with Flax, Hemp, Silk, Hair, Gold, or Silver, or in any Stuff, or Thing, other than what is made of Sheeps-Wool only, or be put into any Coffin lined, or faced with any sort of Cloth or Stuff, or any other Thing whatever, that is made of any other Material but Sheeps-Wool only, upon Pain of forfeiting five Pounds. 18 *Car.* II. *c.* 4.

Q. How far are Ministers and Churchwardens concerned in this Act?

A. An Affidavit of the Persons being so buried must be brought to him within eight Days, by some of the Relations of the Deceased, or other credible Person: If none is brought, he is to give Notice thereof in Writing under his Hand (forthwith) to the Churchwardens or Overseers; who within eight Days shall repair to some Justice of the Peace, or chief

Ma-

Magiſtrate, to obtain a Warrant, and levy the Forfeiture.

Every Miniſter ſhall alſo keep a Regiſter, in a Book provided at the Charge of the Pariſh, and make a true Entry of all Burials within his Pariſh, and of all Affidavits brought to him as aforeſaid: And where none ſuch ſhall be brought in due Time, ſhall enter a Memorial thereof againſt the Name of the Party interr'd, and of the Time when he notified the ſame to the Churchwardens or Overſeers of the Poor. 30 *Car.* II. *c.* 3.

Q. Before whom is the Affidavit to be made?

A. Before a Juſtice of Peace, or any neighbouring Clergyman, who are authorized and required to adminiſter the ſaid Oath, and to atteſt the ſame under their Hands *gratis*.

Q. What Penalty is there upon Miniſter, Churchwardens, and Juſtice, neglecting their Duty herein?

A. Forfeiture of five Pounds; one Half to the Poor of the Pariſh where the Offender liveth, the other between the King and the Informer.

Q. What Time is limited for Proſecution upon this Act?

A. It muſt be within ſix Months after the Offence ſhall be committed.

Q. Is there any thing required of the Overſeers of the Poor upon this Head?

A. When they give up their Accounts, at the Quarter or Petty-Seſſions, or to any

two

two Juſtices at their monthly Meetings, they ſhall give an Account of the Name and Quality of every Perſon interr'd ſince their former Account; and of the Certificates received from the Miniſter, where Affidavits have not been brought to him; and of their levying the Penalties aforeſaid, and Diſpoſal of the ſame, on Pain of 5 *l.* nor ſhall their Account be allowed, till they have accounted for Burials.

TIT. XXIV.

Probate *of* Wills, *and* Adminiſtration *of* Inteſtate Eſtates.

Q. WHAT is a laſt Will or Teſtament?

A. Teſtament (*Teſtatio mentis*) is a voluntary and juſt Diſpoſition of what one would have to be done concerning his *Goods and Chattels, Lands, and Tenements* after his Deceaſe, with the Appointment of an Executor.

Q. Are all Wills under the Cognizance and Direction of the Eccleſiaſtical Laws?

A. No; ſuch only as concern the Diſpoſal of Goods and Chattels; the Matter of the Deviſe of Lands, Tenements, and Hereditaments, with all Queſtions incident thereto, is to be determined by the Laws Temporal, and is not ſubject to the Rules or Deciſions of the Laws Civil or Eccleſiaſtical.

Q. Can

Q. Can laſt Wills and Teſtaments be made equally by *all* Perſons; or being made in due Form, will they be equally valid in *all* Caſes?

A. There are ſeveral Diſabilities reckoned up in the Inſtitutes and Digeſts of the *Roman* Law, which in the main are alſo accounted ſuch by the Law and Practice of *England*; by which all Perſons may make Teſtaments, except as followeth: 1. An Infant Male, under fourteen Years of Age; an Infant Female, under twelve. 2. *Feme-Covert*, (*Fœmina Viro Co-operta*) or a *Married-Woman*, without the Conſent and Licence of her Husband. 3. Ideots, Lunaticks, (except in the Time of their Lucid Intervals) and thoſe that have not a ſound, perfect, and diſpoſing Memory. 4. An Alien Enemy. 5. Perſons convicted and attainted. 6. Recuſants convict.

Q. How many Sorts of Teſtaments are there?

A. Two: A Written Teſtament, and a Nuncupative one.

Q. A Will being made by a Perſon capable of making, and committed to *Writing* by himſelf, or by any other, what elſe is required?

A. That it be duly *publiſhed*, in the Preſence of two ſufficient Witneſſes at the leaſt.

Q. What Qualifications are requir'd in Witneſſes?

A. Whoever is not by Law forbidden to be a Witneſs, is to be admitted.

Q. Can

Q. Can a Woman or a Legatary be Witneſs?

A. Yes, a Woman may abſolutely; the Teſtimony of a Legatary is good, if he has either receiv'd his Legacy, or renounc'd it.

Q. What is a Nuncupative Will?

A. When the Teſtator doth by Word of Mouth only, declare his Will concerning his Goods and Chattels, before a ſufficient Number of Witneſſes.

Q. Can a Will, being made and publiſhed in due Form, be revoked or cancelled by the Teſtator?

A. Yes; and not only ſo, but becomes void of Courſe, by the making of a new Will.

Q. Can a Nuncupative Will make void a former Written Will?

A. * No Will in Writing concerning Goods and Chattels, or any perſonal Eſtate, nor any Clauſe thereof, ſhall be repeal'd, or alter'd, by any Will by Word of Mouth only, except the ſame be in the Life-time of the Teſtator committed to Writing; and after the Writing thereof, read unto the Teſtator, and allowed by him, and prov'd to be ſo done by *Three* Witneſſes at leaſt.

Q. What is requir'd to make a Nuncupative Will good?

A. No Nuncupative Will ſhall be good, where the Eſtate bequeathed exceeds Thirty Pounds, that is not proved by the Oaths of *Three Witneſſes* at leaſt, that are preſent at the making

making thereof; and unleſs it be proved that the Teſtator, at the Time of pronouncing the ſame, did bid the Perſons preſent, or ſome of them, bear Witneſs, that ſuch was his Will, or to that Effect; nor unleſs ſuch Will were made in the laſt Sickneſs, and in the Houſe of his or their Habitation or Dwelling, or where he or ſhe hath been reſident, for the Space of ten Days, or more, next before the making of ſuch Will, except ſurpriz'd by Sickneſs from home, or dying before he return'd.

Q. What Limitations are there as to the Time of proving a Nuncupative Will?

A. A Nuncupative Will ſhall not be proved by the Witneſſes *after* ſix Months, except the Subſtance thereof were committed to Writing *within ſix Days* after the making of the ſaid Will. Neither ſhall any Probate of a Nuncupative Will paſs the Seals of any Court, *till fourteen* Days after the Deceaſe of the Teſtator; nor be prov'd, till Proceſs hath firſt iſſued to call in the Widow or next of Kin to conteſt the ſame, if they pleaſe.

Q. What Witneſſes are good to prove a Nuncupative Will, or any thing relating thereto?

A. All ſuch as are good Witneſſes at Trials at Common Law.

Q. In what Reſpects does a Will of Goods and Chattels differ from a Deviſe or Bequeſt of Lands and Tenements?

A. A Will of Goods and Chattels requires but *Two* ſufficient Witneſſes: A Will of Lands,

Lands, Tenements, and other Hereditaments, *Three or Four*. *Goods* and *Chattels* may be given by a *Nuncupative Will*; but all Deviſes and Bequeſts of *Lands* and *Tenements*, ſhall be in *Writing*, and *ſigned* by the Party ſo deviſing the ſame, or by ſome other Perſon in his Preſence, and by his expreſs Directions; and ſhall be atteſted and ſubſcribed in the Preſence of the ſaid Deviſor by three or four credible Witneſſes, or elſe they ſhall be utterly void. A *Will* of *Goods* and *Chattels* may be *revoked* by a *Nuncupative Will*, according to the Directions, *Pag.* 154. But no Deviſe in Writing of *Lands*, &c. is revocable, otherwiſe than by ſome other *Will in Writing*, or other Writing declaring the ſame; or by burning, cancelling, tearing, or obliterating the ſame by the Teſtator himſelf, or in his Preſence, and by his Direction and Conſent. A Will cannot be made of *Lands*, &c. by any Perſon under the *Age* of One and Twenty Years; a Will of *Goods* and *Chattels* may: And laſtly, a Will of *Goods* and *Chattels* may be made by *Feme Covert*, by Agreement or Conſent of her Husband; but a Will of *Lands* cannot.

Q. You ſay a Will made of *Lands*, &c. muſt be *ſign'd*; what if the Whole be written with the Teſtator's *own Hand*, and have his Name at the Beginning; as, *In the Name of God*, Amen. *I*, A. B, *&c.*

A. * It has been adjudg'd a *ſufficient Signing* within the Statute.

Q. May

Q. May the Teſtator add to or detract from his Will?

A. Yes, by a Codicil, or Codicils; which are reputed for Part and Parcel of the Teſtament, and are to be perform'd as well as the Teſtament, unleſs contrary to ſomething contain'd in it?

Q. Does a latter Codicil ſuperſede a former?

A. No, they may be as numerous as the Teſtator pleaſeth.

Q. What is the *Probate* of a Will?

A. When a Will is prov'd either in common Form by the Oath of the Executor, before the Ordinary, or by Witneſſes, beſides his own Oath, it muſt be exhibited in the Office belonging to the Eccleſiaſtical Court to be kept by the Regiſter, and a Copy thereof in Parchment is to be deliver'd to the Executor under the Ordinary's Seal; which Copy in Parchment ſo ſeal'd is call'd the *Probate*.

Q. Before whom is the Executor to prove the Will?

A. If all the Goods of the Deceaſed (under which are comprehended Specialties, as, Bonds, Statutes, *&c.*) be within the ſame Dioceſe and Juriſdiction, wherein the Teſtator liv'd and dy'd, it muſt be prov'd before the Biſhop of the Dioceſe, or his Commiſſary, or before the Archdeacon or his Official, or the reſpective Judge, according as Compoſition hath been made with the Biſhop, or as Preſcription directs: But if the Perſon deceaſed had at

the Time of his Death, *Bona Natabilia*, in divers Dioceſes, or peculiar Juriſdictions, it muſt be prov'd in the Prerogative Court of the Archbiſhop of that Province.

Q. What are accounted *Bona Notabilia*?

A. He is accounted to have * *Bona Notabilia*, who dies poſſeſſed of Goods and Chattels in ſome other Dioceſe or Dioceſes, or peculiar Juriſdiction within that Province, than that wherein he died, amounting to the Value of *Five* Pounds at the leaſt, unleſs where by Compoſition or Cuſtom, *Bona Notabilia* are reckon'd at a greater Sum; as they are in *London* at *Ten* Pounds.

Q. Suppoſe one dies poſſeſs'd of Goods in * *London* and *Dublin* — ?

A. The Archbiſhop of *Canterbury* is to grant Probate for the Goods in *London*, and the Archbiſhop of *Dublin* for the Goods in *Dublin*, becauſe they are * diſtinct ſupreme Juriſdictions: And ſo for *Canterbury* and *York*.

Q. If ſome Part of the Goods be in the Dioceſe of an Archbiſhop, and * Part in a Peculiar in the ſame Dioceſe — ?

A. There muſt be two ſeveral Probates.

Q. If the Goods are * within two Peculiars within the ſame Dioceſe — ?

A. Then the Will muſt be prov'd before the Archbiſhop of the Province.

Q. If all the Goods lie in a peculiar Juriſdiction — ?

A. The Will muſt be prov'd before the Judge of that Peculiar.

Q. Is

Q. Is the Money or Profits of Lands will'd to be ſold, reckon'd Part of the Goods or Chattels of the Deceaſed?

A. No.

Q. Are Goods found about a Perſon dying *in itinere*, to be accounted *Bona Notabilia?*

A. No.

Q. What is Adminiſtration?

A. It is the Management, committed by the Ordinary in Writing under Seal, of the Goods and Chattels of one that dieth Inteſtate, or hath made a Will without appointing an Executor, or where the Executor refuſeth to prove the Will.

Q. By whom is Adminiſtration to be granted?

A. Regularly he that ſhall have the Probate of a Will, ſhall have the Grant of Adminiſtration when the Party dieth Inteſtate; and if there are *Bona Notabilia*, the Adminiſtration muſt be granted there, where the Probate of a Will, in ſuch a Caſe, is to be granted. The Law is the ſame in both Caſes.

Q. To whom ought the Adminiſtration to be granted?

A. To the Widow, or the next of Kin, who are not attainted of Treaſon, Felony, or have other Diſability, but are *lawful* Friends of the Deceaſed.

Q. What Remedy is there, if this is denied?

A. * A *Mandamus* will go from the Temporal Courts to grant it.

Q. If divers Perſons claim the Adminiſtration as next of Kin —?

A. The Ordinary may admit any one or more at his Pleaſure.

Q. What Method does the Ordinary take to ſecure himſelf, upon granting Letters of Adminiſtration?

A. He takes a ſufficient Bond, with two or more able Sureties, with the following Conditions; That the Adminiſtrator make a true and perfect Inventory, and adminiſter according to Law, and make a juſt Account, and pay according to the Appointment of the Judge, and deliver the Adminiſtration if the Will be prov'd.

Q. In what Manner is the Inventory to be taken?

A. The Executors or Adminiſtrators muſt take two Perſons at leaſt, to whom the deceaſed Perſon was indebted, or left any Legacy, or upon their Refuſal, two other honeſt Perſons, and in their Preſence, and by their Diſcretion, ſhall make, or cauſe to be made, a true and perfect Inventory of the Goods, Chattels, Credits, Wares, Merchandizes, as well moveable as not moveable, that belonged to the Deceaſed, and the ſame ſhall cauſe to be indented, whereof the one Part ſhall be by the ſaid Executor or Adminiſtrator, upon Oath before the Ordinary to be good and true, preſented

ſented to the Ordinary, and the other remain with the Executor.

Q. When muſt the Inventory be exhibited?

A. The Time is left to the Diſcretion of the Ordinary, or he may releaſe the Executor from that Obligation, and decree that * it is not neceſſary in particular Caſes and Circumſtances.

Q. Can *any* Perſon demand a Copy of the Probate and Inventory?

A. Yes; And the Ordinary is requir'd to deliver it with convenient Speed.

Q. What if the Executor will not appear, or appearing, refuſe to prove the Teſtament---?

A. The Ordinary may commit the Adminiſtration, * *cum Teſtamento annexo*, to the next of Kin.

Q. But what if he will afterwards undertake the Executorſhip?

A. The Ordinary may *revoke* the Adminiſtration.

Q. In what Caſes may an Executor be compell'd to perform the Office of an Executor?

A. * If he has meddled with the Goods of the Teſtator, *as Executor*; or if a Legacy be left him, otherwiſe he ſhall loſe his Legacy.

Q. Is the Ordinary bound to prove the Will?

A. Yes; and * if he refuſe, where the Will is not controverted, a Writ will go from the

Temporal Courts to compel him to proceed to Probate.

Q. Is every Executor or Suitor for Adminiſtration oblig'd to take the Oath accuſtom'd in that behalf before the *Judge himſelf?*

A. No: The Judge, in Caſe of a reaſonable Impediment, may * appoint a Commiſſioner, ſome Eccleſiaſtical Perſon abiding near the Party.

Q. What Care is taken for the Preſervation of Wills prov'd in Peculiars?

A. * They are to be tranſmitted to the Regiſtry of the Biſhop, or Dean and Chapter on Pain of Suſpenſion.

Q. Are Adminiſtrators upon the ſame Foot with Executors?

A. They had formerly no Property in the Goods and Chattels, as Executors had; nor could they recover Debts as Executors could do; but by 31 *Ed.* III. they are enabled in both theſe reſpects.

Q. After what Manner are the Goods of an Inteſtate to be diſtributed after Debts, Funerals, and juſt Expences of every Sort allow'd and deducted?

A. By 22, 23 *Car.* II. *c.* 10. amongſt the Wife and Children, or next of Kin in this Manner: One Third to the Wife, the Reſidue by equal Portions amongſt the Children, and ſuch Perſons as legally repreſent them, in caſe any of the ſaid Children be then dead, other than ſuch Child or Children (not being Heir

at

at Law) who have any Eſtate by Settlement of the Inteſtate, or have had their Portion before, equal to what ſhall be diſtributed. But the Heir at Law, notwithſtanding any Land that he ſhall have by Deſcent, or otherwiſe from the Inteſtate, ſhall have an equal Part in the Diſtribution with the reſt of the Children.

Q. What if there be no Children, nor legal Repreſentatives of them?

A. One Moiety of the Eſtate ſhall go to the Wife, the Reſidue ſhall be diſtributed equally to every of the *next of Kindred* to the Inteſtate, who are in equal Degree, and thoſe who legally repreſent *them.*

Q. How far does the Law in this Caſe allow of *Repreſentation* among *Collaterals?*

A. * 'Tis the Practice of the Eccleſiaſtical Court, and confirm'd by the Statute, to reject all Repreſentations of Collaterals, except Children of the Inteſtate's Brothers and Siſters.

Q. Does the Half-Blood come in for Diſtribution with the Whole-Blood; as, Suppoſe one dies inteſtate, and leaves two Brothers, one of the Whole-Blood, the other of the Half-Blood ---?

A. Yes, * they ſhall ſhare alike.

Q. What if there be neither Wife nor Children?

A. The whole ſhall go among the Kindred, in equal Degree, and their legal Repreſentatives.

Q. What if Debts appear afterwards?

A. To the End that a due Regard be had to Creditors, 'tis enacted, That no such Distribution shall be made till after one Year, and every Person who hath a Share, shall give a Bond, if there should be Occasion, to refund.

Q. What if an *Infant* is intitled to an Administration of the Goods of an Intestate---?

A. Administration shall be granted to another, *durante Minore ætate*, for his Use and Benefit, till he is of full Age, *i. e.* One and Twenty.

Q. Is there no Exception to the Rule in the Statute concerning granting Administration to the Wife or next of Kin?

A. * Where an Executor refuses to prove the Will, the Statute supposes that such an Intestate's Intent was to prefer the Kin. But if he makes a *Residuary Legatee*, that Presumption is taken away, and he, being intitled to what remains, after Debts and Legacies paid, hath the first and best Title to be Administrator of the Estate.

Q. It is in the Election of the Ordinary, whether he will grant Administration to *the Wife*, or to the *next of Blood?*

A. * Yes; but having made Choice, he cannot revoke it without just Cause.

Q. Are *Feme Coverts* that die intestate, within the Act?

A. No,

A. No; their Husbands may demand and have Adminiſtration.

Q. If a Child die after the Father, without Will, and without Wife, in the Lifetime of the Mother, what becomes of his Share?

A. Every Brother, and Siſter, and the Repreſentatives of them, ſhall have an equal Share with the Mother.

Q. Can an Adminiſtrator be cited to render an Account before the Ordinary of the perſonal Eſtate of the Inteſtate, *otherwiſe* than by an *Inventory*?

A. No, unleſs at the Inſtance or Proſecution of ſome Perſon or Perſons, in Behalf of a *Minor*, or having Demand out of ſuch perſonal Eſtate as *Creditor*, or next of *Kin*.

Q. In what Caſes do Adminiſtrations die, and expire of themſelves?

A. 1.* Adminiſtrations *durante minore ætate Executoris*; the Power of which ceaſes as ſoon as the Executor is ſeventeen Years of Age, and may be revok'd before. 2. Adminiſtrations* *durante abſentia extra regnum.* 3. Adminiſtrations *pendente lite*, or, if there be no Controverſy, *till the Executor comes* in; which, as well as the two former Heads, are out of the Statute, and, like thoſe, fall of courſe, as ſoon as the Conſideration ceaſes upon which they are granted.

Q. What are the Statutable Fees due for Probate of Will and Adminiſtration?

A. By 21 *Hen.* VIII. *c.* 5. if the Goods of the Deceaſed do not amount clearly over and above the Value of One hundred Shillings Sterling, nothing ſhall be paid for the Probate, only Six-pence to the Scribe. Goods being above 5 *l.* and not above 40 *l.* Three Shillings and Six-pence: Goods being above 40 *l.* the whole Fee ſhall be but Five Shillings, or ten Lines a Penny. The ſame for Adminiſtration, only there is no Proviſion made for above 40 *l.* which is *Caſus omiſſus.* And for theſe Sums, the Will ſhall be regiſter'd, and deliver'd under Seal to the Executor.

Q. What is the Fee for delivering *a Copy* of the Teſtament and Inventory?

A. The ſame as that for Regiſtring, or a Penny for every ten Lines.

Q. What Penalty is there for Offences againſt this Statute?

A. Forfeiture of ſo much Money as any Perſon ſhall take contrary to it, to the Perſon griev'd, and Ten Pounds, one half to the King, and the other half to the Party griev'd.

Q. How come the Charges of Probate and Adminiſtration to be at this Time ſo much *increaſed?*

A. This Statute being made in the Reign of *Hen.* VIII. it is agreed on all Hands that the Fees given in it are become much too ſmall, by the great Alteration of the Value of Money, and therefore the *Eſtabliſh'd Cuſtom* of every Place, being reaſonable, has been adjudg'd a

good Rule; but the greateſt Addition to the Expence ariſes from the *Stamps*.

Q. What Stamps are required in theſe Caſes?

A. For a Probate or Adminiſtration for any Eſtate above 20 *l.* Value, a double Five Shilling Stamp. For every Copy of a Will engroſſed, a Two-penny Stamp, and of an Inventory, a double Six-penny Stamp.

Q. Are Soldiers and Seamen upon the ſame Foot with others in theſe Reſpects?

A. No: Probate and Adminiſtration of the Goods of Soldiers and Seamen, ſhall be exempt from the Stamp-Duty, if they are ſlain or die in the King's Service. And no more ſhall be taken of their Executors or Adminiſtrators for Probate or Letters of Adminiſtration than 5 *s.* except the Eſtate was 20 *l.* or more, upon Pain to forfeit 10 *l.*

TIT. XXV.

Proteſtant Diſſenters *and* Conventicles.

Q. WHAT Proviſion have the *Temporal* Laws made againſt Separation and Conventicles?

A. By 35 *Eliz. c.* 1. If any Perſon or Perſons, above the Age of ſixteen Years, ſhall be abſent from the Church, without lawful Cauſe, for a Month; or ſhall adviſe others, to

to abſtain from coming to Church, or to come to unlawful Conventicles, or ſhall join in any Conventicle, all ſuch Perſons ſhall be committed to Priſon till they conform and make Submiſſion; which if they refuſe for three Months, being requir'd to do it by the Biſhop of the Dioceſe, or any Juſtice of Peace of the County, or the Miniſter of the Pariſh, they ſhall abjure the Realm, and the Abjuration ſhall be enter'd of Record, and certified to the Juſtices of Aſſize. And to refuſe to abjure, or not to depart, or to return without Licence, ſhall be Felony without Benefit of Clergy.

Q. What if the Perſon, before Warning given to abjure, will ſubmit?

A. He muſt come to Church, and make open Submiſſion and Declaration of his Conformity, in a Form provided in that Statute, and he ſhall be diſcharg'd; but if he relapſes, he ſhall loſe the Benefit of his Submiſſion: This Submiſſion muſt be regiſtered in a Book for that Purpoſe by the Miniſter, and certified in ten Days to the Biſhop.

Q. What does the Perſon abjuring ſuffer beſides Baniſhment?

A. He ſhall forfeit all his Goods and Chattels for ever, and his Lands during Life.

Q. What Penalty do they incur who keep or retain any in their Houſes who ſhall not repair to Church or Chapel for the Space of one Month together, not having reaſonable Excuſe?

A. Ten

A. Ten Pounds Forfeiture, 3 *Jac.* I. *c.* 4. and ſo for any in their Service: But any Perſons may keep their Parents, or Ward, notwithſtanding this Act.

Q. What other Act is there againſt ſeditious Conventicles?

A. 22 *Car.* II. *c.* 1. wherein 'tis enacted, That any Perſon of Sixteen, or upwards, being preſent at a Conventicle where Five are aſſembled, in Houſe or Field, upon Proof before a Juſtice, Record ſhall be made thereof, and the Party fined 5 *s.* for the firſt Offence, and for the ſecond 10 *s.* and the ſaid Fines, where there is no Diſtreſs to be made, by reaſon of the Poverty of the Offender, ſhall be levied upon any other Offender in the ſame Conventicle.

Q. What Penalty is upon the Preacher?

A. For the firſt Offence he ſhall forfeit 20 *l.* and if he be unable to pay, it ſhall be levied upon the Perſons preſent: For the ſecond Offence 40 *l.*

Q. What Penalty upon him who ſuffers a Conventicle in his Houſe?

A. Forfeiture 20 *l.* to be levied, in caſe of Inability, upon the Perſons preſent, yet ſo as no Perſon ſhall pay above 10 *l.* for others.

Q. What Cenſure does the *Canon* inflict upon Schiſmaticks;

A. To ſeparate from the Communion of the Church of *England*, as profane and unmeet to join with in Chriſtian Profeſſion; or to meet together to conſult againſt the Doctrine, Worſhip

ſhip, or any Part of the Government and Diſcipline thereof: Or to affirm that Miniſters, refuſing to ſubſcribe to the Form and Manner of God's Worſhip in it, and their Adherents, may truly take unto them the Name of another Church, not eſtabliſhed by Law; and dare preſume to publiſh it, that this their pretended Church hath a long Time groaned under the Burthen of certain Grievances impoſed on it, and upon the Members thereof, by the Church of *England*, and the Orders and Conſtitutions therein by Law eſtabliſhed: Or to affirm that ſeparate Meetings may rightly challenge to themſelves the Name of true and lawful Churches; or that private Perſons may make Eccleſiaſtical Orders and Conſtitutions, without the King's Authority, ſhall be Excommunication *ipſo facto*. *Can.* 9, 10, 11, 73.

Q. What is the Act commonly called the *Toleration Act?*

A. An Act 1 *Will.* and *Mar. c.* 18. confirm'd 10 *Ann. c.* 2. for exempting their Maeſties Proteſtant Subjects, diſſenting from the Church of *England*, from the Penalties of certain Laws, and from Proſecution in the Eccleſiaſtical Court, for or by reaſon of their Nonconforming.

Q. Does this Act extend to all Sorts of Proteſtant Diſſenters?

A. Only to ſuch as ſhall qualify themſelves as therein is preſcribed?

Q. Upon what Conditions are they intitled to this Exemption?

A. They

A. They muſt take the Oaths of Allegiance and Supremacy at the General Quarter-Seſſions, and ſubſcribe and repeat the Declaration made 30 *Car.* II. *c.* 1. againſt Tranſubſtantiation, Invocation of Saints, and the Sacrifice of the Maſs; which Declaration is as follows.

I A. B. *do ſolemnly and ſincerely, in the Preſence of God, profeſs, teſtify, and declare, That I do believe that in the Sacrament of the Lord's-Supper there is not any Tranſubſtantiation of the Elements of Bread and Wine into the Body and Blood of Chriſt, at or after the Conſecration thereof by any Perſon whatſoever. And that the Invocation or Adoration of the Virgin* Mary, *or any other Saint, and the Sacrifice of the Maſs, as they are now uſed in the Church of* Rome, *are ſuperſtitious and idolatrous. And I do ſolemnly, in the Preſence of God, profeſs, teſtify, and declare, That I do make this Declaration, and every Part thereof, in the plain and ordinary Senſe of the Words read unto me, as they are commonly underſtood by* Engliſh *Proteſtants, without any Evaſion, Equivocation, or mental Reſervation whatſoever: And without any Diſpenſation already granted me for this Purpoſe by the Pope, or any other Authority or Perſon whatſoever, or without any Hope of any ſuch Diſpenſation from any Perſon or Authority whatſoever; or without thinking that I am or may be acquitted before God or Man, or abſolv'd of this Declaration, or any Part thereof; although the Pope, or any other Perſon, or Per-*

Persons, or Power whatsoever, should dispense with or annul the same; or declare, that it was null or void from the Beginning.

This Declaration any Dissenter may be required to make, and subscribe, by any Justice of Peace: And upon Refusal, committed to Gaol, till the Quarter-Sessions; and if upon a second Tender, at the General or Quarter Sessions, he shall refuse, he shall be taken for a Popish Recusant Convict.

Q. What is required with respect to the *Places* where they meet?

A. No Assembly shall be allowed, till the Place of meeting be certified to the Bishop of the Diocese, or Archdeacon, or Justices at the Quarter-Sessions, and registered, and a Certificate thereof given. And their Meetings must be *open*, not barred or locked.

Q. How must Dissenting *Teachers* be qualified?

A. They must make and subscribe the said Declaration, and take the Oaths at the Quarter-Sessions. And declare their Approbation of, and subscribe the Thirty-nine Articles, except the XXXIV, XXXV, and XXXVI; which concern the Traditions of the Church, Homilies, and the Consecration of Bishops and Ministers: And except also those Words of the XXth Article, [*The Church hath Power to decree Rites and Ceremonies, and Authority in Controversies of Faith, and yet*]

Q. Are Anabaptist Teachers intitled to this Exemption?

A. Upon

A. Upon the ſame Conditions; and excepting that they are not obliged to ſubſcribe to the XXVIIth Article, concerning Infant Baptiſm.

Q. What muſt Quakers do to have the Benefit of this Act?

A. Inſtead of the Oaths, they ſhall make and ſubſcribe the aforeſaid Declaration, and a Declaration of Fidelity to the King, and of his Supremacy; and ſhall ſubſcribe a Profeſſion of their Chriſtian Belief in theſe Words:

I A. B. profeſs Faith in God the Father, and in Jeſus Chriſt, his eternal Son, the true God, and in the holy Spirit, one God, bleſſed for evermore; and do acknowledge the holy Scriptures of the old and new Teſtament to be given by divine Inſpiration.

Q. Are the Laws made for frequenting Divine Service on the Lord's-Day in Force againſt Diſſenters?

A. Yes, againſt all Perſons, except they come to ſome Aſſembly of Religious Worſhip.

Q. Who are excluded from the Benefit of this Act?

A. All Papiſts, or Popiſh Recuſants, and any that in preaching or writing ſhall deny the Trinity.

Q. Will a Man's qualifying himſelf under Proſecution intitle him to the Benefit of this Act?

A. Yes, Teachers and Preachers excepted.

Q. May

Q. May Teachers qualified in one County by Virtue thereof officiate in another?

A. Yes, upon producing, if required, a Certificate of being ſo qualified, and ſwearing and ſubſcribing, if required.

Q. What Penalty is there for diſturbing a Diſſenting Congregation, or miſuſing the Teacher?

A. The Offender ſhall find two Sureties, to be bound by Recognizance in 50*l.* each; and in Default thereof, be committed to Priſon till next Quarter-Seſſions, and upon Conviction there forfeit 20*l.*

TIT. XXVI and XXVII.

Popiſh Prieſts and Recuſants reſtrained, by divers Penalties and Incapacities, &c.

Q. WHAT Proviſion is made by Law againſt Popery?

A. By 27 *Eliz. c.* 2. All Jeſuits, Prieſts, or other Eccleſiaſtical Perſons of the Church of *Rome*, coming into or remaining in the Queen's Dominions, ſhall be adjudged guilty of High Treaſon; and all their Receivers, Aiders, and Maintainers, of Felony, without Benefit of Clergy. To give or ſend Relief to them, ſhall be a *Præmunire*. And if any Perſon, knowing a Jeſuit or Prieſt remaining within the Realm, do not within twelve Days diſcover the ſame to ſome Juſtice of Peace, he ſhall be fined and ſuffer Impriſonment during the Queen's

Queen's Pleaſure; and the Juſtice of Peace who doth not within twenty-eight Days diſcloſe it to ſome of the Privy Council, ſhall forfeit two hundred Marks.

'Tis alſo High Treaſon to execute Pope's Bulls, or any Inſtrument from him, or to publiſh them, or receive them, or to receive Abſolution or Reconciliation by Virtue of them; and if offered, not to diſcloſe them, Miſpriſion of *Treaſon*, 13 *Eliz. c.* 2.

Whoever ſhall bring into the Realm any *Agnus Dei's*, Croſſes, Pictures, Beads, *&c.* or offer or deliver the ſame to any Perſon to be uſed, both the Perſon ſo doing, and the Perſon ſo receiving the ſame, ſhall incur a *Præmunire*. Ibid.

None ſhall import Popiſh Books, upon Pain of forfeiting 40*s.* for each, and burning of the Books.

Juſtices may ſearch the Houſes of Recuſants, and finding Altars, Reliques, Crucifixes, *&c.* may burn or deface them. 3 *Jac.* I. *c.* 5.

All Perſons, and the Procurers, and Aiders, and Maintainers of them, who ſhall put in Practice to abſolve the King's Subjects from their Obedience, or to reconcile them to the See of *Rome*, or to any other foreign Power, ſhall be adjudged Traitors, 3 *Jam.* I. *c.* 4.

Any Perſon who ſhall be convicted of *ſaying* or ſinging of Maſs, ſhall forfeit 200 Marks, and be impriſoned a Year; of *hearing* Maſs, 100 Marks, and the like Impriſonment. 23 *Eliz. c.* 1.

Q. What Encouragement is there for the Diſcovery of Jeſuits and Popiſh Prieſts?

A. Any Perſon diſcovering any Recuſant, or other Perſon, who ſhall entertain any Jeſuit, *&c.* or ſhall diſcover any Maſs to have been ſaid, and the Prieſt that ſaid the ſame, and the Perſons preſent, or any of them, ſhall have the third Part of the Forfeitures, if the third Part exceed not 50*l.* 3 *Jac.* I. *c.* 5. And by 11, 12 *Will.* III. *c.* 4. Any Perſon ſeizing a Popiſh Biſhop, Prieſt, or Jeſuit, and proſecuting him till he is convicted of ſaying Maſs, or exerciſing any other Part of his Function within theſe Realms, or the Dominions thereto belonging, ſhall receive 100*l.* from the Sheriff upon Certificate from the Judge of his Conviction; and the Sheriff neglecting to pay it, ſhall forfeit 200*l.* And any Prieſt ſaying Maſs, *&c.* or Papiſt teaching School, or boarding Youth, ſhall be adjudged to perpetual Impriſonment; except for ſaying Maſs in the Houſes of Foreign Miniſters, the Prieſt not being a natural-born Subject, and his Name, and the Place of his Birth, and the Foreign Miniſter to whom he ſhall belong, being entered in the Secretary's Office.

Q. What Penalty is there upon Recuſants for abſenting from Church, by 23 *Eliz. c.* 1?

A. Twenty Pounds for every Month, for every Perſon above Sixteen, not having lawful Impediment, beſides the Penalty of One Shilling for every *Sunday* and *Holiday*. But, *N. B.* All Offences againſt this Act, (except Treaſon, or Miſpriſion of Treaſon) ſhall be diſcharged upon Submiſſion and Conformity.

Q. What

Q. What *Civil* Diſabilities and Burdens do Recuſants lie under?

A. 3 *Jac.* I. *c.* 5. No Recuſant convict ſhall practiſe Law, nor Phyſick, nor be a Judge or Officer in any Court, nor Officer by Sea or Land, upon Pain to forfeit 100 *l.* Nor any who is married to a Recuſant, except Huſband, Children, and Servants repair to the Church, and once in every Month at leaſt receive the Sacrament, at the Times by Law appointed; and every Recuſant ſhall be diſabled, as a Perſon excommunicate, till he ſhall conform, only he may ſue for ſuch Lands as are not to be ſeized for Recuſancy.

A Recuſant married otherwiſe than according the Church of *England*, by a Miniſter lawfully authorized, if a Man, he ſhall be diſabled to have Freehold; and if a Woman, to claim Dower, or Jointure, or Goods.

Every Recuſant cauſing his Child to be baptized otherwiſe than according to the Church of *England*, or deferring it a Month, ſhall forfeit 100 *l.* and being buried otherwiſe than according to the Eccleſiaſtical Laws, *not being excommunicated*, his Executors ſhall forfeit 2 *l.* No Recuſant ſhall be Executor, Adminiſtrator, or Guardian, but the next of Kin who conforms.

Papiſts ſhall be double taxed. They are alſo diſabled to inherit and to purchaſe. They are alſo to be *preſented*. Nor are they allow'd to remove five Miles from their Dwelling, without Licence from the King and Council;

nor to come to Court, without ſpecial Command, upon Pain of 100 *l.* nor live within ten Miles of *London*, except Tradeſmen, who have no other Dwelling.

All Armour and Ammunition ſhall be taken from them by Warrant from four Juſtices, and kept at the Coſt of the Recuſants. By 1 *Will.* and *Mar. c.* 15. Two Juſtices may impower any Perſon to ſearch for Arms in their Houſes, and ſeize them for the Uſe of the Crown. Nor ſhall a Recuſant keep a Horſe of above 5 *l.* Value, upon Pain to be ſeized and forfeited to the King.

Any two Juſtices, knowing or ſuſpecting a Papiſt, may tender the Declaration 30 *C.* II. *c.* 1.

They are bound to find Horſe and Arms for the Militia; but the Lieutenants of the Counties ſhall do it for them, and charge it upon the Eſtate.

By 27 *Eliz. c.* 2. No Parent or Guardian ſhall ſend Children beyond Sea without Licence except for Merchandiſe, or to ſerve as Mariners, upon Pain to forfeit 100 *l.* to the Uſe of them who ſhall diſcover and convict them; nor to be educated in any Popiſh College or Seminary, under the like Penalty: And by 1 *Jac.* I. *c.* 4. the Perſon or Perſons ſo paſſing beyond Sea, or ſent, ſhall be diſabled to inherit, purchaſe, or enjoy any Eſtate real or perſonal within this Realm; and by 3 *Car.* I. *c.* 2. ſhall be diſabled to ſue, to be Executor or Legatee, or to bear any Office within the Realm, unleſs they ſhall conform in ſix Months after their Return.

Q. What Security have we againſt Popery in reſpect of the Prince?

A. By 1 *Will.* and *Mar. c.* 2. all and every Perſon and Perſons that is, are, or ſhall be reconciled to, or ſhall hold Communion with the See or Church of *Rome*, or ſhall profeſs the Popiſh Religion, or ſhall marry a Papiſt, ſhall be excluded, and be for ever unable to inherit, poſſeſs, or enjoy the Crown and Government of this Realm, *&c.* And in all and every ſuch Caſe the People ſhall be abſolved, and are hereby abſolved from their Allegiance; and the ſaid Crown and Government ſhall deſcend to the next Proteſtant Heir. And every King and Queen of this Realm ſhall, on the firſt Day of the *Meeting of the firſt Parliament* next after his or her coming to the Crown, ſitting in the Throne in the Houſe of Peers, in the Preſence of the Lords and Commons therein aſſembled, or at his or her Coronation, which ſhall firſt happen, make, ſubſcribe, and audibly repeat the Declaration 30 *Car.* II. *c.* 1.

If under the Age of twelve Years at the Time of Succeſſion, he ſhall do the ſame as ſoon as he is of that Age.

And laſtly, By 12, 13 *Will.* III. *c.* 2. amongſt other Articles for the ſecuring our Religion, Laws, and Liberties, 'tis expreſly enacted, That whoſoever ſhall hereafter come to the Poſſeſſion of this Crown, ſhall join in Communion with the Church of *England* as by *Law eſtabliſhed.*

Q. What Penalty is incurred by refuſing the Oaths of Allegiance and Supremacy, when lawfully tendered?

A. Any Perſon ſo refuſing, ſhall be liable to all the Penalties of a Popiſh Recuſant Convict; nor ſhall he be allowed to vote for any Member of Parliament, unleſs, inſtead of the Oaths, he has made and ſubſcribed the Declaration of Fidelity.

Q. What is the Oath of Abjuration?

A. An Oath provided 13, 14 *Will.* III. *c.* 6. for the further Security of the Proteſtant Succeſſion; which Oath, with the neceſſary Alterations, at preſent ſtands thus:

I A. B. *do truly and ſincerely acknowledge, profeſs, teſtify, and declare in my Conſcience, before God and the World, that our Sovereign Lord* George II. *is lawful and rightful King of this Realm, and of all other his Majeſty's Dominions and Countries thereunto belonging. And I do ſolemnly and ſincerely declare, That I do believe in my Conſcience, that the Perſon pretended to be the Prince of* Wales *during the Life of the late King* James, *and ſince his Deceaſe pretending to be, and taking upon himſelf the Stile and Title of King of* England, *by the Name of* James *the Third, hath not any Right or Title whatſoever to the Crown of this Realm, or any other the Dominions thereto belonging; and I do renounce, refuſe, and abjure any Allegiance or Obedience to him. And I do ſwear, that I will bear Faith and true Allegiance to his Majeſty*

jeſty King George II. *and him will defend, to the utmoſt of my Power, againſt all traiterous Conſpiracies and Attempts whatſoever, which ſhall be made againſt his Perſon, Crown, or Dignity: And I will do my utmoſt Endeavour to diſcloſe and make known to his ſaid Majeſty, and his Succeſſors, all Treaſons and traiterous Conſpiracies which I ſhall know to be againſt him, or any of them; and I do faithfully promiſe, to the utmoſt of my Power, to ſupport, maintain, and defend the Succeſſion of the Crown, againſt him the ſaid* James, *and all other Perſons whatſoever, as the ſame by an Act, intitled,* An Act for the further Limitation of the Crown, and better ſecuring the Rights and Liberties of the Subject, *is, and ſtands limited to the Princeſs* Sophia, *Electoreſs and Dutcheſs Dowager of* Hanover, *and the Heirs of her Body, being Proteſtants. And all theſe Things I do plainly and ſincerely acknowledge, and ſwear, according to theſe* expreſs *Words by me ſpoken, and according to the plain and common Senſe and Underſtanding of the ſame Words; without any Equivocation, mental Evaſion, or ſecret Reſervation whatſoever: And I do make this Recognition, Acknowledgement, Abjuration, Renunciation, and Promiſe, heartily, willingly, and truly, upon the true Faith of a Chriſtian.* So help me God.

Q. Who are obliged, and upon what Penalty, to take this *Oath of Abjuration?*

A. All Perſons in Office Civil or Military, or having Place, or Patent, or Grant under the Crown; all Eccleſiaſtical Perſons, or

Members of the University upon the Foundation; Schoolmasters and Ushers; Dissenting Teachers; all Persons practising in the Law, within thirty Miles of *London*; and every Member of Parliament, of both Houses, before he sits; upon Pain of being *ipso facto* uncapable of holding their Offices and Employments, and of sitting and voting in Parliament, or making Proxy. And if they execute the said Offices, or sit in Parliament, after such Neglect or Refusal as the Statute specifies, they shall be disabled to sue, or be Guardian, or Executor; and be incapable of any Legacy, or Deed of Gift: or to hold any Office within this Realm, and also forfeit 500 *l.* And by 9 *Geor.* I. *c.* 24. Persons refusing the Oaths, are obliged to register their Names and Estates.

TIT. XXVIII.

Lands given in MORTMAIN, *for the* Endowment *of* CHURCHES.

Q. WHAT is meant by Lands given in *Mort-main?*

A. Lands given to Religious, or other, whereby the Services due from them are withdrawn; and so the Lands may be said to come into a Dead-hand, for that a Dead-hand yieldeth no Service.

Q. What Restraint is there upon such Gifts?

A. By 7 *Ed.* I. No Person, religious or other, whatsoever, (*i. e.* any other whatsoever

ever of like Quality of Being, as a Body Politick or Corporate, Eccleſiaſtical or Lay, Sole or Aggregate) ſhall buy or ſell any Lands or Tenements, or under Colour of Gift or Leaſe, or by reaſon of any other Title receive the ſame, or by any other Craft or Engine ſhall preſume to appropriate to himſelf, whereby ſuch Lands may in any wiſe come into *Mort-main*, under Pain of Forfeiture of the ſame to the Chief Lord, or to the Lord next immediate, or to the King.

Q. How far are the Reſtraints upon Lands in *Mort-main* taken off?

A. By 7, 8 *Will.* III. *c.* 37. The King may *licence* any Perſon, or Bodies Politick or Corporate, to alien in *Mort-main*, or to purchaſe or take in *Mort-main*, in Perpetuity or otherwiſe, any Lands, Tenements, Hereditaments whatſoever, of whomſoever the ſame are holden: And ſuch Lands, *&c.* ſo aliened, or purchaſed, and licenced, ſhall not be ſubject to any Forfeiture, by reaſon of ſuch Alienation or Purchaſe.

Q. Is the King's Licence neceſſary in all Caſes of this kind?

A. * *Impropriations* may be given to the Church, without Licence of *Mort-main*; and alſo Lands and Tenements may be received, or purchaſed, for the Parſon and his Succeſſors, where the Benefice is not worth 100 *l.* *per Ann.* clear. * Alſo the Corporation for the Bounty of Queen *Anne* may take and purchaſe, without Licence or Writ of *ad quod Damnum*,

pro-

provided that Persons under Age, of *non-sane* Memory, and Women-*covert* may not make the Gift.

Q. Does the Statute of 23 *Hen.* VIII. *c.* 10, against Feoffments, *&c.* to the Use of Parish Churches, *&c.* extend to take away good and charitable Uses?

A. It has been resolved, that it does not. * To which my Lord *Coke* adds, "That any "Man may give Lands, Tenements, or He-"reditaments, to any Person or Persons, and "their Heirs, for finding a Preacher, Main-"tenance of a School, Relief and Comfort of "maimed Soldiers, Sustenance of poor Peo-"ple, Reparation of Churches, Highways, "Bridges, or Causies, discharging of poor In-"habitants of Towns from common Charges, "for making of a Stock for poor Labourers "in Husbandry, and poor Apprentices, and "for the Marriage of poor Virgins, or for any "other charitable Uses: And it is good Policy, "upon every such Feoffment or Estate, to re-"serve a small Rent to the Feoffor and his "Heirs, or to express some such Consideration "of some small Sum, that so the Feoffees "may be seized to their own Use, and not "to the Use of the Feoffor; by which it is "out of Doubt, that this Statute cannot make "void the Use.

TIT. XXIX.

Poſſeſſions *and* Revenues *of* Biſhopricks.

Q. WHAT Care does the Law take of the Poſſeſſions and Revenues of Biſhopricks?

A. They are provided for * by ſeveral Statutes: And firſt, That the Temporalties of Biſhops ſhall not be ſeized into the King's Hands, without true and juſt Cauſe, according to the Laws of the Land, and Judgment thereupon given.

Q. Is a Contempt upon a Writ of *Quare non Admiſit* a lawful Cauſe?

A. No, that is only to be puniſhed by * a reaſonable *Fine.*

Q. What Care does the Law take to prevent *Alienations* of Biſhopricks?

A. * All Grants of Lands, *&c.* belonging to any Archbiſhoprick or Biſhoprick, that ſhall be made to any Perſon or Perſons, except for twenty-one Years, or three Lives, and with the accuſtom'd reſerv'd Rent, or more, ſhall be utterly void.

Q. What becomes of the Temporalties of Biſhopricks, in the Time of Vacation?

A. They are to be kept in the King's Hands, and to be delivered to the Succeſſor.

Q. If a Prelate ſue in Right of his Church, and die before Judgment ——?

A. The

A. * The Succeſſor ſhall have Action; and ſo for Goods taken in the Time of the Predeceſſor, and no Action begun.

Q. If any intrude in Time of Vacation -----?

A. The Succeſſor ſhall have a Writ to recover Seiſin, and Damages ſhall be awarded.

TIT. XXX.

POSSESSIONS *and* REVENUES *of the* CLERGY.

Q. WHAT Remedy has a Succeſſor to recover Lands belonging to his Church, which were *alien'd* by his Predeceſſor?

A * A Writ of *Juris Utrum*: And by 13 *Eliz. c.* 10. to prevent Alienations of Church-Lands, *&c.* 'tis enacted, That no Grant thereof, other than for twenty-one Years, or three Lives, with the accuſtom'd reſerv'd Rent, or more, to be paid yearly during the ſaid Term of three Lives, ſhall be made, upon Pain of being utterly void.

Q. What if the Incumbent die, having at his proper Coſts and Charges before his Death cauſed any of his Glebe-Land to be manur'd and ſown---?

A. * He may deviſe the Profits of the Corn ſo ſown by Will; but if another is inducted before Severance, the *Executor* ſhall have the Corn,

Corn, but * the *Succeſſor* the Tithe of it. The * ſame is true, in caſe of Deprivation or Reſignation after Glebe ſown: The Succeſſor ſhall have the Tithe, if the Corn was not ſever'd at the Time of his coming in; otherwiſe if ſever'd, as in the Caſe of Death.

Q. What is the Reaſon why the *Succeſſor* ſhall have the Tithes, and not the *Executor*?

A. Becauſe, altho' the Executor repreſents the Teſtator, yet he cannot repreſent him as Parſon; inaſmuch as another Parſon, as inducted: But if the Parſon dies *after* Severance from the Ground, and before the Corn is carried off, in that Caſe the Succeſſor ſhall have no Tithe; becauſe tho' it was not ſet out, yet a *Right* to it was veſted in the deceaſed Parſon by Severance from the Ground.

Q. How ſoon may the Succeſſor enter upon the Parſonage-Houſe, and Glebe not ſown?

A. * Upon one Month's Warning after his Induction ------; deducting for the Glebe in his Rent, what it is reaſonably worth to the Leſſee.

Q. What does the *Canon* provide for the Information of an Incumbent, as to what belongs to him?

A. A *Terrier* and true Note of all the Glebes, Lands, Meadows, Gardens, Orchards, Houſes, Stocks, Implements, Tenements, and Portions of Tithes, lying out of their Pariſhes, to be taken by View of honeſt Men in every Pariſh, by the Appointment of the Biſhop, whereof the Miniſter to be one, is to be laid

up

up in the Biſhop's Regiſtry, for a perpetual Memory thereof. *Vide* the Appendix.

Q. Is every Church of Common Right intitled to Houſe and Glebe?

A. Yes: And the Aſſignment of them was of ſuch abſolute Neceſſity, that without them no Church could be regularly conſecrated.

Q. What is the Meaning of that Maxim in the Common Law, That the *Fee-Simple of the Glebe is in Abeyance?*

A. That is, it is * only in the Remembrance, Intendment, and Conſideration of the Law: The Reaſon of which is, that no Act of the Predeceſſor ſhould make a *Diſcontinuance*; to take away the Entry of the Succeſſor, and to drive him to a *real Action*, whereby he ſhould be deſtitute of a Maintenance in the mean-time.

Q. When is the Freehold of the Glebe in the Parſon?

A. After Induction, but with theſe Limitations: 1. That he may not alienate, no, not with Conſent of Patron and Ordinary; nor, 2. may he exchange, tho' with the like Conſent; (yet we find a Decree in Chancery, to confirm an Exchange of Glebe for other Lands) nor, 3. may he commit *Waſte.*

Q. Are Glebe-Lands, being *in the Hands of the Parſon*, to pay *Tithe* to the Vicar?

A. * No, tho' the Vicar is endowed of the Tithes of all Lands in the Pariſh; nor, being in the Hands of the Vicar, ſhall they pay Tithe to the Parſon, according to the known

Maxim

Maxim of the Canon Law, *Eccleſia Decimas Eccleſiæ ſolvere non debet*, and *Clerici a Clericis Decimas non Exigant.*

Q. But what if the Glebe be Leaſed out—?

A. Then it is liable to pay Tithes reſpectively as other Lands are.

Q. If a Parſon or Vicar is Leſſor of Glebe, ſhall he have Tithes of his Leſſee?

A. Yes; And if a Parſon let his Rectory and reſerves his Glebe, he ſhall pay Tithes to his Leſſee.

Q. If a Parſon after having ſown his Glebe leaſes the Land, or ſells the Corn, ſhall he have Tithe when the Leſſee or Vendee ſevers the Corn?

A. Yes * becauſe before Severance they cannot paſs without expreſs Words.

Q. Can the Vicar have the ſmall Tithes of the Glebe Lands of the Parſonage, when *in the Hands* of the *Appropriator?*

A. Yes, if he be ſpecially endow'd of them.

Q. What are the General Rules of Law concerning the Nature and Kinds of Tithes?

A. 1. Tithes in their Nature are a *Poſſeſſion* merely *Spiritual.* 2. They are a Poſſeſſion *Incorporeal*, by Reaſon of which a Rent cannot be reſerved out of them, nor can they paſs without Deed, becauſe there can be no Livery. 3. Of common Right they belong to the Church within the Precinct of whoſe Pariſh they ariſe: But 4thly, Notwithſtanding this common Right, one Parſon may preſcribe

ſcribe to have Tithes within the Pariſh of another, and thoſe are called, *Portions of Tithes.*

Q. What Account is given of the Original of Portions of Tithes?

A. they aroſe from the Patron's Power to appropriate the Tithes, or Part of them, of his Advowſon, to any other Church, till the Council of *Lateran* 1179, under *Alexander* III. and alſo, from the Lord of a Manor's having Part of his Eſtate lying in another Pariſh, *before* the Reſtraints of Voluntary Appropriations; and from the Occaſional Grants that might be made by Parſon, Patron, and Ordinary, *ſince* the ſaid Reſtraints were laid.

Q. To whom belong Tithes *Extra-parochial*, or within the Compaſs of no certain Pariſh?

A. By the Law of *England*, all *Extra-parochial* Tithes, as, in ſeveral Foreſts, *&c.* belong to the *Crown*, and may be granted by the King to whom he will. By the *Canon* Law they were to be diſpoſed of at the Diſcretion of the Biſhop.

Q. What is the common Diviſion of Tithes, with regard to their ſeveral Kinds or Natures?

A. they are divided into *Prædial*, *Mixt*, and *Perſonal.*

Q. What are *Prædial* Tithes?

A. Such as ariſe merely and immediately from the Ground, as Grain of all ſorts, Hay, Wood, Fruits, Herbs, *&c.*

Q. What are *Mixt* Tithes?

A. Thoſe

A. Thoſe which ariſe not immediately from the Ground, but from Things nouriſhed by the Ground; as Colts, Calves, Lambs, Milk, Cheeſe, Eggs, Chickens, *&c.* All which, according to the antient Diviſion (which was only into *Prædial* and *Perſonal*) do fall under the Denomination of *Prædial Tithes*, and are therefore called by ſome, *Prædial Tithes Mediate*, by way of Oppoſition to Tithes properly *Prædial*, and called by them *Prædial Tithes Immediate.*

Q. What are *Perſonal* Tithes?

A. Such as ariſe from the *Labour* and *Induſtry* of Man; being the tenth Part of the clear Gain, after Charges deducted.

Q. What is the Diviſion of Tithes with regard to *Value?*

A. Into great and Small.

Q. What are accounted Great Tithes?

A. Corn, Hay, and Wood.

Q. What are ſmall Tithes?

A. The Prædial Tithes of *other* Kinds, together with thoſe which are callled Mixt, and Perſonal.

Q. May this Diviſion be altered?

A. We are told, in the Books of Common Law, it may, 1. * By *Cuſtom*; which will make *Wood* a ſmall Tithe under the general Words, *Minutæ Decimæ*, in the Endowment of a Vicar. 2. * By *Quantity*; which will turn a ſmall Tithe into a great, *viz.* if the Pariſh is generally ſown with it. 3. * By Change of *Place*; which makes the ſame Things (as

Hops) in *Gardens*, ſmall Tithes; in *Fields*, great Tithes: But in ſome Caſes this ſeems to have been contradicted.

Q. Are Mills liable to pay Tithe?

A. All *Corn-Mills*, not erected before 9 *Edw.* II. *Anno* 1315, are Titheable. And to prove that a Mill is not within the Statute, it muſt appear, that the Building was before the *Memory of Man*, and that the Mill *never* did pay Tithe; upon which two Proofs, the Law will preſume it to be ſuch an *ancient* Mill, as is not within this Statute: But * if the Proof fail in either Point, it ſhall be liable to pay Tithes.

Q. If a Wind-mill or Corn-mill is built upon Lands for which a Modus is paid, ſhall the Modus for the *Land* be alſo for the *Mill?*

A. So it hath been held, and that no Tithe ſhall be paid; which ſeems ſtrange, conſidering that every *Modus*, when made, was ſettled in ſuch Manner, as to be a Recompence for the Tithe, *viz.* the Tithe then in Being, and of the ſame Nature; not for Tithe *not in Being*, and of a different Nature.

Q. Are Fulling-mills, Tin-mills, Lead-mills, *&c.* Titheable?

A. * Tithe is not due of ſuch, otherwiſe than by Cuſtom; and where it is ſo due, it is to be paid as a meerly *Perſonal* Tithe.

Q. What are the Rules of Canon and Common Law, concerning Things Titheable or not Titheable?

A. 1. * Tithes ſhall be paid only of ſuch Things as *increaſe every Year*, and *once in the Year: Ex Annuatis renovantibus ſimul & ſemel.* But yet by Cuſtom Tithes may be paid of Things that do *not increaſe.* 2. Tithes ſhall not be paid of ſuch Things as are * *feræ Naturæ*; as Deer, Conies, *&c.* This Maxim is contrary to the antient Law of the Church of *England*; and it appears * from ſeveral antient Appropriations, that *Fiſh* and *Pigeons*, and *Rabbits*, were then *Titheable.* But by this new Rule, if *Fiſh* be Titheable it muſt be by *Cuſtom*; and if Pigeons are Titheable, it muſt be becauſe they are *ſold*, and not eaten in the Houſe; though it is certain, that *ſelling*, or *eating at home*, makes them neither more nor leſs *feræ naturæ*; and whatever Ferity either *Pigeons* or *Rabbits* might have in their Natures, they are become ſo *Tame*, as to be the *Property* of particular Perſons, and the Stealers of them puniſhable as Felons. Add to this, that by the feeding and maintaining of *Deer* and *Conies*, not only large Quantities of Land may be employed, and the Profits of them in great meaſure taken both from the Parſon and the Publick, but great Profit may alſo accrue thereby to the Owners of ſuch Lands.

Q. What Statute is there for the Payment of Perſonal Tithes?

A. By 23 *Edw.* VI. *c.* 13. Every Perſon exerciſing Merchandizes, Bargaining, and Selling, Cloathing, Handicraft, or other Art or

Faculty, being ſuch kind of Perſons, and in ſuch Places, as heretofore within theſe forty Years have accuſtomably uſed to pay ſuch Perſonal Tithes, or of Right ought to pay, (other than ſuch as have been common Day-Labourers) ſhall yearly, at, or before *Eaſter*, pay for his perſonal Tithes, the tenth Part of his clear Gains; his Charges and Expences, according to his Eſtate, Condition or Degree, allow' and deducted.

Q. How ſtands the general Practice in this reſpect?

A. There is an univerſal Subſtraction of *Privy* or Perſonal Tithes, which wants to be remedied: And * a Remedy for this in the Year 1562, amongſt other Matters to be remedied in the Church was propoſed, by rating of ſome Certainty upon every Perſon, by Contribution, or otherwiſe to a reaſonable Sum; or elſe to appoint a Rate according to the Rent of their Houſes, as it is in *London*; *i. e.* for every Pound-Rent, to the Parſon or Vicar 2*s.* 9*d.* And this is no more than was intended * to be made a Law in the Reign of *Edw.* VI. *Vid.* the *Cod. p.* 700.

Q. How many Ways may there be a *Diſcharge* from Tithe?

A. Lands may be diſcharged from the Payment of Tithes, 1. By Statute. 2. By Compoſition Real. 3. By Cuſtom or Preſcription.

Q. What Lands are diſcharged by Statute?

A. All Lands belonging to Monaſteries, Priories, *&c.* which before their Diſſolution

were diſcharged by Bull, Order, or Compoſition, and which were diſſolved by 31 *Hen.* VIII. *c.* 13. a Special Clauſe being provided for *their* Diſcharge, which otherwiſe would have expired, as the Diſcharges of thoſe did which were diſſolved 27 *Hen.* VIII. and 1 *Edw.* VI. for want of ſuch Clauſe.

Q. What elſe is a Diſcharge by Virtue of that Clauſe?

A. * *Perpetual Unity of Poſſeſſion* of the Lands, and of the Rectory in the ſame Hands, which is a new Diſcharge which was not before at the Common Law. For if the Monaſtery, *&c.* was ſeized of the Lands and Rectory *ſimul & ſemel*, Time out of Mind, and paid no Tithes within the Memory of Man, thoſe Lands ſhall now be exempted from Payment of Tithes, by *Perpetual Unity of Poſſeſſion.*

Q. What other Lands are diſcharged by Statute?

A. Barren Ground, converted into Arable and Meadow, ſhall not pay Tithes for ſeven Years, 2 *Edw.* VI. *c.* 13. but if it was Titheable before, it ſhall continue to pay the ſame as before.

Q. What is Compoſition Real?

A. Where the Incumbent, together with the Patron and Ordinary, make Agreement by Deed, executed under their Hands and Seals, that certain Lands ſhall be diſcharged from the Payment of Tithes *in Specie*, in Conſideration of a Recompence to the Incumbent, either in Money, or in Lands to him and his Succeſ-

ſors for ever, or in ſome other Thing for their Benefit and Advantage.

Q. Can any Real Compoſitions be made now?

A. No, no more than Alienations; for by 1 and 13 *Eliz.* all Grants are expreſly made void, which are not according to the Tenor of thoſe Statutes.

Q. What is the only Caution then that is to be given in this Caſe to preſerve the Revenues of the Church from Diminution?

A. Againſt the Growth of *Modus's*; which, however ſuppos'd by the Law to be founded in *Real Compoſitions*, have chiefly grown, and it is to be feared, are ſtill growing, from the Inadvertency of the Clergy, acquieſcing in the ſelf ſame Agreements from one Succeſſor to another.

Q. What is the Difference between *Cuſtom* and *Preſcription?*

A. Cuſtom is that which gives Right to a Province, Country, Hundred, City or Town, and is common to all within the reſpective Limits; in pleading of which it is alledged, that in ſuch a County, *&c.* there is, and Time out of Memory hath been, ſuch a Cuſtom uſed and approved therein. *Preſcription* is that which gives a Right to ſome particular Perſon, with Reſpect to ſome particular Houſe, Farm, or other Thing; in pleading of which it is alledged, That all they whoſe Eſtate he hath in ſuch Land, have, Time out of Mind,

paid

paid ſo much yearly, *&c.* in full Satisfaction of all Tithes ariſing on thoſe Lands.

Q. Of how many Kinds are Cuſtom and Preſcription?

A. They are either *De non Decimando*, or *De Modo Decimandi.*

Q. What is the *General* Rule concerning Cuſtom and Preſcription *De non Decimando?*

A. None but *Spiritual* Perſons and Corporations, being by Common Law capable of Tithes in *Pernancy*, (*i. e.* Tithes taken in kind,) may ſo preſcribe, as to be *wholly freed* from Tithes without any Recompence or Conſideration for them.

Q. What Exceptions are there to this Rule?

A. 1. * The King, as *Mixta Perſona*, may preſcribe *de non Decimando*; by the ſame Reaſon that, as ſuch, he is capable of Tithes. 2. * The Leſſee, Tenant at Will, and Copyholder of a Spiritual Perſon, though a Layman, ſhall in this reſpect enjoy the Exemption of the Leſſor, *&c.* who is ſuppoſed to reap the *Benefit* of it, in reſerving the greater Rents, by Reaſon of ſuch Exemption. 3. * A County, or Part of a County, may well plead a Cuſtom *de non Decimando*, in reſpect of this or that particular Tithe; but not *abſolutely* in reſpect of all Tithe; nor can a *ſingle Pariſh* preſcribe *de non decimando* for *particular* Tithes.

Q. What is *Modus Decimandi?*

A. * When Lands, Tenements, or Hereditaments, have been given to the Parſon and his Succeſſors, or an Annual certain Sum or other Profit, always, Time out of Mind, to the Parſon and his Succeſſors, in full Satisfaction and Diſcharge of all the Tithes in kind of ſuch a Place.

Q. What Qualifications are required to make a good Cuſtom or Preſcription?

A. Theſe four; * 1. The *Modus* muſt be ſomething for the Benefit and Intereſt *of the Parſon.* * 2. The *Modus* muſt not be one Tithe in Conſideration of another; as, not Tithes of other Kinds, to be diſcharged of Tithes of *dry Cattle*; not ſo much for every Cow and Calf, for Tithe of *Herbage.* * 3. It muſt be ſomething, in kind, different from the Thing that is due; provided the Things are *de Jure* Titheable, and not by Cuſtom only. * 4. It muſt be ſomething *certain* and *durable* at leaſt, though not ſo valuable.

Q. Can a *Modus*, though founded on good Conſideration, be diſcharged?

A. Yes, ſeveral Ways. * 1. Where Land is converted to *other* Uſes; ſo when the Preſcription is for Hay and Graſs, *ſpecially* in ſo many Acres of Land, if the Land is converted into a Hop Garden, or Tillage, the Preſcription is gone. * 2. By the *Alteration* or the *Deſtruction* of the Thing, for which the *Modus* was paid; as, where two Fulling-mills were made under the ſame Roof, and turned into a Corn-mill; where alſo there was one

Pair

Pair of Stones in a Mill, and another Pair was added; and where the Water-courſe was altered by the Owner, and the Mill was pulled down, and re-edified upon it; in all theſe Caſes it was adjudged that the *Modus* was gone. * 3. By Non-payment of the Conſideration, or Payment of Tithes in kind, for ſo long a Time as to deſtroy the Poſſibility of making Proof that ſuch Cuſtom or Preſcription was. But an Interruption for ſome ſhort Time only will not diſcharge it.

Q. What Things are Titheable and not Titheable, and what is the Manner of paying Tithe?

A. The Manner of Payment of Tithes is for the moſt Part governed by the Cuſtom of every Pariſh; what Things are Titheable, and what not, will appear more particularly from what follows. Firſt, we will inquire of great Tithes, Corn, Hay, and Wood.

Q. How is Corn or Grain Titheable? As Wheat, Barley, Beans, *&c.*

A. 'Tis commonly Tithed by the tenth Shock, Sheaf, or Cock, where the Cuſtom of the Place is not otherwiſe.

Q. Is Tithe due of *Rakings*?

A. No, being left for the Poor, and being alſo the Remains of Corn, for which Tithe hath been paid; but then they muſt be Rakings *minus voluntarie diſperſæ.*

Q. Is Tithe due of *Stubble*?

A. No; becauſe it is no more than Part of the Stalk upon which the Corn grew.

Q. What

Q. What Tithe is due of Hay?

A. Every Tenth * Cock of *Hay*; for the Thing, which the ancient Conſtitution of the Church of *England* makes payable to the Parſon, is *Decimæ de Fœnis*, and not *de Gramine*. Though in ſeveral Caſes it hath been held, that the Owner is not bound to make it into Hay, unleſs the Cuſtom of the Place oblige him to it: But that of common Right, and Cuſtom apart, it is ſufficient if it be ſet into Graſs Cocks, and, ſo Tithed, be left wholly to the Care of the Parſon.

Q. May the Parſon make his Hay upon the Land on which it grew?

A. Yes, of common Right, and may for that End paſs over * the Pariſhioner's Ground by the common Path.

Q. What are the General Rules concerning After-math (or ſecond Moath) and After-paſture?

A. De jure Tithes are payable for the * After-math without a ſpecial Preſcription to diſcharge it. * After-paſture pays only by Cuſtom.

Q. What is Agiſtment, vulgarly called Joiſting or Jouſting?

A. Agiſtment (from the *French*, *Giſer* [*jacere*] or *Giſter* [*Stabulari*] a Word proper to Deer,) ſignifies to take in, and feed the Cattle of a Stranger in the King's Foreſts; in a large Signification, it is the feeding of Cattle upon Paſture Lands, which pay no other Tithes.

Q. What

Q. What is the general Rule concerning *Agiſtment?*

A. It is to be paid * for Beaſts agiſted for *Hire*, or for dry Cattle, which are depaſtured to be *ſold*; but not for Cattle reared for the Plough or Pail, nor for Cattle expended in the Houſe.

Q. What Exceptions are there to this Rule?

A. Two; 1. * If the Cattle depaſtured for the Plough, are not for ploughing the Land in the *ſame Pariſh* where they are fed, but in another, Tithe ſhall be paid for them. 2. * The Diſcharge of the Cattle for the Plough ſhall only continue while they are fed and nouriſhed for *that Uſe*, and the Parſon hath the Benefit of their Labour.

Q. How is Tithe to be paid, where profitable and unprofitable Cattle feed together?

A. Tithe ſhall be paid in kind for the Profitable, and Agiſtment for the Unprofitable.

Q. In what *Manner* is Agiſtment to be paid?

A. Where no ſpecial Cuſtom is for Gueſt-Cattle taken in, the tenth Part of the Money received is payable; * if for the Owners Cattle, then the Tithe ſhall be according to the Value of the Land, after the Rate of two Shillings in the Pound: But by Cuſtom or Preſcription, ſuch Tithe may be paid in other Manner, as by the Acre, and for all manner of Cattle together.

Q. If Tithe of Agiſtment be denied, where, and againſt whom may Suit be commenced?

A. In

A. * In the Spiritual Court, againſt the Occupier of the Land; or in Caſe they are Gueſt-Cattle, either againſt the Occupier of the Land, or Owner of the Cattle: And no Prohibition will lie.

Q. Are *Head-Lands* Titheable?

A. Anno 29 *Eliz.* * it was judged a good Diſcharge from the Tithe of Hay upon the Head-land, that the Owner reaped, bound, and ſhocked the Corn, on Suppoſition that the tenth *Ridge* is the Thing due for Tithe, and that the Labour of the Owner about the Corn (to which he was not bound) was a good Foundation of ſuch Diſcharge.

And 16 *Car.* I. a Cuſtom for Head-Lands ſown with Corn to be diſcharged of Tithes, becauſe fed with Plough-Cattle, or mowed and cut for that Purpoſe, was adjudged a good Cuſtom.

Q. Is Wood Titheable?

A. Wood is Titheable, becauſe it is of * annual *Growth*; tho' the Tithe is not of annual *Payment*: And it has been reſolved, that, *de Jure* * *per Legem Terræ*, no Perſon can be diſcharged of Tithe of Wood, even tho' it be for *Fuel* and *Hedging*; and that therefore it hath been uſual in Prohibitions to alledge Hearth-Penny, or the like, for the Diſcharge. Some hold it is titheable by Cuſtom only.

Q. What ſort of Tithe doth Wood yield?

A. * *Prædial.* And in common Opinion it paſſes for a *great* Tithe: Tho' in Controverſies between Parſon and Vicar, where the Endowment

dowment is loſt, this Point is determined by Preſcription; and in Caſe the Endowment remains, and doth not expreſly mention Wood, and yet *that* Tith hath been *uſually* taken by the Vicar, the Law will (by favourable Conſtruction) either graft it upon ſome general Expreſſion in the Endowment, or elſe preſume that there might be a ſubſequent Augmentation of the Endowment of the Vicar, by which he became intitled to Tithe-Wood.

Q. How many Ways may Wood be diſcharged of Tithe?

A. With regard to the *Age* it is of, the *Uſe* it is put to, and the *Place* of its Growth.

Q. What is diſcharged with regard to its Age?

A. Timber-Trees, of or above twenty Years Growth, by the Statute of *Sylva Cædua* 45 *Ed.* III. *c.* 2.

Q. What Wood is intended under the Name of *Timber-Trees?*

A. Wood fit for building of Houſes, and Ships; ſuch as *Oak*, *Elm*, and *Aſh*: And it hath alſo been adjudg'd, that * Beech, Aſp-Trees, Cherry-Trees, Haſle, Holly, Willow, where Timber is not to be had, or is very ſcarce, are included within the Statute.

Q. Are Timber-Trees free only as to the *Trunk*, or *Timber?*

A. Yes: They are free alſo as to the * Bark, Root, and Germens, which grow upon the antient Stock, of what Age ſoever.

Q. Are

Q. Are Loppings titheable?

A. * Not of Timber-Trees, the Branches being privileged by the Body: But whether Branches, if the Trees are lopped *before* twenty Years, ſhall not always pay for Loppings *after* twenty Years, inaſmuch as at the firſt lopping the Tree was not privileged, hath been made a Queſtion.

Q. Are * Dotards, or old decay'd Trees, exempt from Tithe?

A. Yes; having been once privileged, they ſhall be always ſo.

Q. What Wood is Titheable, tho' above twenty Years Growth?

A. * Alders, Birch, Broom, unleſs to burn; Furzes, if ſold: Maple.

Q. What Wood is diſcharged of Tithe, in reſpect to the Uſe it is put to?

A. Wood * for the Owner's Firing, Hedgeing, and Fencing of the Premiſes, within the ſame Pariſh, hath been adjudged Tithe-free; but this to be alledged, not abſolutely, that *per legem Terræ* Wood ſo applied ſhall not pay Tithe: But *ſub modo*, that the Parſon hath ſome Conſideration for it; or at leaſt, that the Houſe is for Maintenance of Husbandry, by reaſon of which the Parſon hath *Uberiores Decimas*.

Q. What is diſcharged with Regard to the Place of its Growth?

A. Wood in the Wild of * *Kent*, and the Wild of *Suſſex*; wherein a Preſcription to be diſcharged of Tithe-Wood hath been often held

held to be good, upon a Suppoſition of what has been often *ſaid*, but never *prov'd*, *viz.* That Tithe of Wood in general is due by *Cuſtom only*.

Q. In what Manner is Wood to be Tithed?

A. In many Places they fell out the * tenth *Acre* of Wood ſtanding: And ſo it may be by the Pole or Perch, or by the tenth Faggot or Billet, according as the Cuſtom of the Place hath been.

Q. Is Under-wood Titheable?

A. Yes, and the Tithe ſhall be paid of Under-wood digged up by the Roots. If Under-wood is ſold ſtanding, the Tithe ſhall be paid by the Buyer.

Q. Shall * Nurſeries pay Tithes?

A. Yes: It hath been held ſo, where the Owner dug them up, and made Profit of them, and ſold them in *another Pariſh*.

Q. By whom ſhall the Tithe of Nurſeries be paid?

A. If the Owner ſells them, and pulls them up himſelf, he ſhall pay the Tithe; but if he ſell them particularly to another, the Vendee ſhall pay the Tithe.

Q. What Tithe is due of Cattle?

A. The tenth * Colt, Calf, Lamb, and Pig, ſhall be paid: Or, by Cuſtom, one in *Seven*; and if under, a Half-penny, or what Cuſtom ſhall direct, for each.

Q. May the Parſon, when there are under ſeven Calves or Lambs in one Year, chuſe whether he will proceed in that Manner, or let them run on till one becomes due the enſuing Year?

A. The

A. The Canon Law leaves it to his Choice; but the Common Law will not allow it, because Tithe must be paid * annually: A Custom to pay the tenth Part of the Price of every Calf that is sold, is a good Custom.

Q. To whom is the Tithe of Cattle feeding upon Wastes, or Commons, where the Bounds of Parishes are uncertain, to be paid?

A. to the Incumbent of that Parish in which the Owner of the Cattle dwells, * unless limited otherwise by Custom or Prescription.

Q. What if a Man prescribe to pay one Half-penny for every Lamb that he shall sell before the first Day of *May*, and (to deceive the Parson) shall sell all his Lambs the Day before *May*-Day ---?

A. * This is fraudulent, and the Custom shall be no Discharge.

Q. How is the Tithe of Milk to be paid?

A. Every * tenth Meal, to the Parson in whose Parish the Cows yielding Milk Depasture for the Time, at the *Church-Porch*, or else at the *House* of the Parson or Vicar; but where Tithe is paid of Cheese, it shall not be paid of Milk, *& vice versa*: The same Rules hold in the Milk of Goats, and Ewes, where it is preserved.

Q. What sort of Tithe is Wool?

A. A mixt, small Tithe; and it is Titheable *de Jure* * when clipped, but by Prescription it may be set out altogether at another Time;

Time: The Parſon ſhall have the tenth Pound, or, by Cuſtom, the tenth Fleece, (or one in ſeven, if under) the Owner chuſing two.

Q. Is Tithe-Wooll due of * Sheep kill'd and ſpent in the Houſe, or for rotten Sheep which die?

A. Yes: And a Conſultation is provided in the Regiſter in theſe Words, *De decima Lanæ provenientis de Ovibus eorundem Parochianorum infra eandem Parochiam occiſis & morientibus a Feſto S.* Michaelis, *uſque ad Feſtum Paſchæ ſingulis annis*; but ſome hold, that if Sheep be ſhorn, and die of the Rot, or other Diſeaſe, before the *Eaſter* following, the Wooll is not titheable, unleſs the Parſon can preſcribe for it.

Q. Is Tithe to be paid of Locks of Wooll caſually loſt, or * Neck-Wooll, cut off to preſerve the Sheep from Vermin?

A. No, except in Caſe of Contrivance and Fraud.

Q. If a Man pay Tithe of Lambs at *Mark's*-Tide, and afterwards at *Midſummer* ſhare the Reſidue, or the nine Parts, ſhall he pay Tithe of Wooll of the Reſidue?

A. Yes, becauſe there is a * new Increaſe.

Q. Is any thing to be paid if there be under ten Pounds of Wooll?

A. Yes, * a reaſonable Conſideration; becauſe, being due *de Jure*, a *Modus in non decimando* cannot be allowed in any Caſe.

Q. Is there any Limitation of the ſtrict Right of Tithe-Wooll?

A. It hath been *limited* by an Allowance of the two following *Modus's* as good, *viz.* 1. The tenth Part of the Wooll of *all the Sheep* which he had *before Lady-Day*, in Satisfaction of all the Wooll of ſuch Sheep as ſhould be brought into the Pariſh *after Lady-Day*. 2. To be diſcharged of Tithe of thoſe he ſhould *ſell* but *two Days* before the Shearing, in Conſideration that Time out of Mind he hath paid Tithe-Wooll of thoſe which he *bought* but *two* Days *before* the Shearing.

Q. How ſhall the Tithe be proportioned between the ſeveral Incumbents, in caſe Sheep are removed from one Pariſh to another, *between* the Times of Shearing?

A. The Rule of the * *Engliſh Canon*-Law is, That the Tithe of Wooll ſhall be paid to the Incumbent, in whoſe Pariſh they have remained conſtantly from the Time of Shearing till *Martinmas*, though they be afterwards removed: That if they be removed, *within* the ſaid Time, from Pariſh to Pariſh, each Incumbent, in whoſe Pariſh they ſhall remain at leaſt thirty Days, ſhall have his Proportion of the Wooll; but, if they be removed from Pariſh to Pariſh after the ſaid Time, (that is, from *Martinmas* to the Time of Shearing) a reaſonable *Agiſtment* ſhall be paid by the Owners for the Time they ſtay. The Rules of the Temporal Law in this Matter ſeem not to be eaſily reconciled, * ſome allowing Agiſtment, others holding the contrary.

Q. Is a Cuſtom to pay Tithe in Kind for Sheep if they continue in the Pariſh all the Year, and an Half-penny for every one that was ſold before the Time of Sheering, a good Cuſtom?

A. No; * it has been adjudged an *unreaſonable* Cuſtom; as evidently defeating the Parſon of his juſt Right.

Q. What is the *Time* of Payment of Lambs, Kids, Calves, Pigs, *&c.*

A. It is regularly when they are ſo old, that they may be weaned, and live without the Dam, unleſs the *Cuſtom* of the Place confine the Payment to any certain Time or Age.

Q. If ſeveral Mens Sheep Depaſture together in one Flock, or under one Shepherd, ſhall they be tithed together?

A. No, every Owner ſhall pay his Tithe of them himſelf.

Q. But if the Head of a Family have his Flock mixed with his Childrens Sheep, which are under his Tuition, and he takes the Profit of them ----?

A. In that Caſe they ſhall be tithed together.

Q. Shall Tithe be paid of Cattle which are turned off to be fatted, and are grazed?

A. Yes; * Tithes of Agiſtment ſhall be paid, ſince they are no way beneficial to the Parſon, in any *other* Tithes: And * ſo of Cows, after they become barren, and are fatted for *Sale.* The like is to be ſaid of Horſes: That while they are kept for the Uſe of Husbandry, no

Tithe ſhall be paid; but if kept for Sale, or to carry Coals, or for the like Offices, which are profitable to the Owner, and unprofitable to the Parſon, Tithe ſhall be paid for them.

Q. What Tithe is due of Fowls, as Hens, Geeſe, Ducks, Turkeys?

A. Either in Eggs, or in the Young, according to Cuſtom; but * Turkeys have been declared *Feræ Naturæ*, (for what Reaſon is not ſaid) and conſequently not titheable.

Q. What other Things are reckoned to be *feræ naturæ?*

A. Deer, Conies, Doves, Bees, Fiſh, Pheaſants, Partridge, which are not titheable, unleſs by Cuſtom; * only of *Pidgeons* it hath been reſolved, that Tithe ſhall be paid, if *ſold*, but not of thoſe that are ſpent in the Houſe: And * of Bees, not the tenth Swarm ſhall be paid, but the tenth Meaſure of Honey, and the tenth Pound of Wax.

Q. When a Park has paid a *Modus*, and is diſ-park'd, does that *Modus* continue; or ſhall it be diſcharged, and Tithe paid in Kind?

A. * If the *Modus* was a certain Conſideration in Money for *all the Tithes of ſuch a Park*, ſuch *Modus* ſhall hold, notwithſtanding it be diſpark'd; but if the *Modus* was for the *Deer* and *Herbage* of ſuch a Park the *Modus* is gone upon diſparking: In like manner, if the *Modus* hath been to pay a * Buck and a Doe for all the Tithes of ſuch a Park, and the Park is diſpark'd, the *Modus* ſhall continue, and the Owner may give a Buck and a Doe out of another

other Park: But if it was to pay the Shoulder of every Deer, or expreſly a Buck, or a Doe out of the ſame Park, the *Modus* is gone.

Q. Are Lands in a Foreſt to pay Tithes?

A. * As Lands which are in no Pariſh pay Tithes to the Crown, ſo Lands lying within the Precinct of a Foreſt, tho' alſo in a *Pariſh*, if in the Hands of the King, do pay no Tithes: But if a Foreſt be *diſafforeſted*, and within a Pariſh, it ſhall pay Tithes; becauſe the not paying Tithes, in the Hands of the King, was an Immunity for *that Time only*, while it remained a Place for *Deer*, and was in the Hands of a Perſon who might preſcribe *de non decimando*.

Q. What kind of Tithe is Fiſh? And how is it to be paid?

A. This Tithe * hath been declared in its Nature to be *perſonal*, and therefore not to be taken in Kind, or by every tenth Fiſh; but by a juſt Conſideration in Money, *deductis expenſis*: But by *Cuſtom* Fiſh may be payable in *Kind*, tho' leſs than the Tenth will do, becauſe not *de jure* titheable.

Q. How is Tithe of Fruit to be paid?

A. Tithe of Apples, Pears, Plumbs, Cherries, *&c.* is to be paid in Kind, when gathered.

Q. * If the Soil of an Orchard be ſown with any ſort of Grain---?

A. The Parſon ſhall have Tithes of the Fruit-Trees, and of the Grain, for they be of ſeveral and diſtinct Kinds.

Q. May Tithe in Kind be demanded of all Garden-Herbs and Plants, as Parſly, Sage, Cabbage, Turneps, Saffron, *&c?*

A. Yes; but ordinarily ſome certain Conſideration is paid for theſe Things, either by Cuſtom, or by Agreement with the Parſon.

Q. Is the Tithe of Crabs, * Maſt, *&c.* to be paid?

A. Yes, when the ſame are *gathered*; and Satisfaction is to be given, if eaten with Swine on the Ground: But in a Caſe, reported by my Lord Keeper *Littleton*, it is held, that no Tithes are to be paid for * *Acorns*, which *fall* from the Trees, and are eaten up by the Swine.

Q. What Tithe is due of Flax and Hemp?

A. * Every Acre of Hemp or Flax ſhall pay five Shillings; and ſo proportionably, before the ſame is carried off the Ground, unleſs on Lands diſcharged of Tithes.

Q. What Tithe is due of Hops?

A. * Hops are great Tithes, but in Orchards and Gardens ſmall Tithes. There can be * no *Modus* for Hops, becauſe of a late Date; but they may be included in a *Modus pro decimis minutis:* Whether they are titheable by the tenth Pole, or by Meaſure, is queſtioned; tho' * it hath been ſaid that they are titheable by the Pole, * and the tenth Part may be ſet out before they are dried.

Q. What Things are there of which no Tithe is to be paid?

A. 1. Things

A. 1. Things * of the Subſtance of the Earth, and not annual, as Gravel, Coals, Chalk, Brick, Clay, Heath, Turf, Salt, Slate, Tile, Mines of Metals of all kinds, *unleſs by Cuſtom*, 2. *Non Renovantia*, as Houſes of Habitation, unleſs there has been Time out of mind a *Modus decimandi*: And in *London* there are particular Laws concerning the Tithe of Houſes; and Roots and Stubbs of Wood cut down, if they are grubbed up before any new Branches ſpring out.

Q. Is Tithe * due of *Woad?*

A. Yes: And growing in the Nature of an Herb, the Tithe thereof is a ſmall Tithe; and goes to the Vicar, where he is to have the ſmall Tithes.

Q. What are the Rules of Common and Canon Law concerning the ſetting out and carrying away Tithes?

A. 1. Every Perſon is bound of common Right * to *cut down* and *ſet out* the Tithes of his Land. 2. The *Time* and *Manner* of ſetting out Tithes, whether in *Sheafs*, or *Cocks*, or *Shocks*, depends upon the particular Cuſtom of every Place, which is to be followed. 3. Tithes being ſet out, and ſever'd from the nine Parts, * become *Lay-Chattels*; therefore if they are carried away, the Remedy is in the *Temporal* Courts, unleſs carried away by the Owner. 4. * The *Care* of the Tithes, after Severance, as to ſpoiling, *&c.* reſts upon the Parſon, and not upon the Owner of the Land. 5. The Parſon hath a Right to *carry away* his Tithes;

and if that be obſtructed, he ſhall have Remedy in the Spiritual Court.

Q. What Care is taken of the due ſetting out of Tithes, that it may be done faithfully, and without Fraud?

A. The Laws of the Church intitle the Parſon to have Notice given him. And by the Statute 2 *Ed.* VI. *c.* 13. § 2. it ſhall be lawful for every Party to whom any Tithes ought to be paid, or his Deputy, or his Servant, to *ſee* the ſaid Tithes to be ſet forth, and ſever'd from the nine Parts, and the ſame quietly to take and carry away.

Q. May the Parſon ſet forth the Tithes himſelf, without the Licence and Conſent of the Owner?

A. No: If he ſhall of his own head tithe the Corn, Hay, *&c.* and carry it away, he is a Treſpaſſer, and an Action will lie againſt him for it.

Q. After the Tithes are ſet forth, may the Parſon ſpread abroad, dry, and ſtack his Corn, Hay, *&c.* in any convenient Place upon the Ground where the ſame grew, till 'tis fit to be carried?

A. Yes; but he muſt not exceed a convenient and neceſſary Time for the doing it, to the Damage of the Pariſhioner.

Q. By what *Way* may the Parſon carry away his Tithes?

A. Either by the common Way, or any ſuch Way as the Owner of the Land uſeth to carry away his nine Parts.

Q. To

Q. To whom of Right belongs the Cogniſance of Tithes?

A. To the Spiritual Courts. And there ſeems to be an ample Recognition of this Right 1 *Ric.* II. *c.* 13, 14. where 'tis ſaid, "That "the People of holy Church purſuing in the "Spiritual Court for their Tithes, and their "other Things, which *of right ought, and* "*of old Times were wont to pertain to the ſame* "*Spiritual Court.*

Q. Can a *Modus* or a Cuſtom be tried in the Spiritual Court?

A. * The *Modus* is to be *ſued* for in the Eccleſiaſtical Court, as well as the Tithe: And if it be *allowed* between the Parties, they ſhall proceed there; but if the Cuſtom be denied, it muſt be tried at the Common Law: And if it be found for the Cuſtom, then a Conſultation muſt go; otherwiſe, the Prohibition ſtandeth.

Q. What Aſſiſtance have the Spiritual Courts in order to enforce their Deciſions?

A. In Caſe of Contempt, Contumacy, or Diſobedience before the Ordinary, or other competent Judge, the ſecular Power ſhall aſſiſt him; and any two Juſtices of the Peace (one *Quorum*) may commit the Offender to Ward, till he find Security to obey the Eccleſiaſtical Court. 27 *Hen.* VIII. *c.* 20.

Q. What if there is an Appeal from the Sentence of the Spiritual Court?

A. By 32 *Hen.* VIII. *c.* Upon every ſuch Appeal Coſts ſhall be adjudged againſt the Ap-

Appellant, and Surety taken of the other to reſtore them, if the Judgment be reverſed.

Q. What Difference is there between ſuing for Tithe in the Temporal and in the Spiritual Court?

A. By 2, 3 *Ed.* VI. *c.* 13. No Perſon ſhall take or carry away the Tithe, till ſet out, or agreed for with the Parſon, or other Proprietor thereof, upon Pain of Forfeiture of *treble* Value; to be recovered in the Temporal Court, by Action of Debt, (* the Forfeiture to the Party grieved:) If Suit be in the Spiritual Court, *double* Value ſhall be recovered, beſides Coſts of Suit.

Q. Is nothing to be recovered in the Temporal Court beſides the treble Value?

A. No; neither the Tithes themſelves, nor any Satisfaction for them: * Nor could either *Damages* or *Coſts* be recovered with the treble Value, till *Coſts* were particularly given by Statute 8 *Will.* III. *c.* 11. where the ſingle Value ſhall not exceed twenty Nobles, *i. e.* 6*l.* 13*s.* 4*d.*

Q. How muſt the Action be laid upon this Statute of *Ed.* VI?

A. Not for the Subſtraction of Tithes, but for a Contempt of the Statute, in not ſetting them out, * *&c.* And being a Contempt, it dies with the Perſon.

Q. May an Executor have an Action upon this Statute for Tithes not ſet forth during the Life of the Teſtator?

A. Yes.

Q. Re-

Q. Recite that Part of the Statute which relates to Suit in the Eccleſiaſtical Court.

A. If any Perſon carry away his Corn, or Hay, or his other † *Predial Tithes*, before the Tithe thereof be ſet forth, or willingly withdraw his Tithes of the ſame, or of ſuch other Things, whereof predial Tithes ought to be paid, or do ſtop, or let the Parſon, Vicar, Proprietory, Owner, or other their Deputies, or Farmers, *to View*, take, and carry away their Tithes, as is aboveſaid, by reaſon whereof the ſaid Tithe or Tenth is loſt, impair'd or hurt, that then, upon due Proof thereof made before the Spiritual Judge, the Party ſo carrying away, withdrawing, letting, or ſtopping, ſhall pay the double Value of the Tenth or Tithe ſo taken, loſt, withdrawn, or carried away, over and beſides the Coſts, Charges, and Expences in the Suit: The ſame to be recovered before the Eccleſiaſtical Judge, according to the King's Eccleſiaſtical Laws.

Q. Ought the double Value, together with the Statute, to be *expreſly mention'd* in the Libel?

A. * Yes, otherwiſe Prohibition will go: But then the Libel muſt be ſo ordered, as not to be grounded directly upon the Statute for *more* than the *double Value*; for if the *ſingle* Damages (*i. e.* the Value of the Tithes) be alſo grounded upon it, this will be interpreted a

† N. B. *Predial Tithes*: This Statute extends to no other, as to giving double and treble Value.

ſuing

ſuing in the Spiritual Court for *treble Value*, and a Prohibition will go.

Q. What is the Reaſon why only the *double Value* is to be recovered in the *Eccleſiaſtical* Court, whereas the *treble* is to be recovered in the *Temporal?*

A. Becauſe in the Eccleſiaſtical Court he may recover the Tithes themſelves, which in the Temporal Court he could not do; and therefore the whole Value recovered in the Eccleſiaſtical Court, is equivalent to the treble Forfeiture at Common Law.

Q. What if the Party condemned diſobey without Appeal?

A. The Judge ſhall excommunicate him, and require the Writ *de Excommunicato capiendo.* 2, 3 *Ed.* VI. *c.* 13.

Q. What is to be done by a Perſon ſuing † *Prohibition?*

A. Any Perſon ſuing for a Prohibition in the King's Courts, before ſuch Prohibition granted to him, ſhall deliver to the Hands of ſome of the Juſtices, or Judge of the ſame Court, where ſuch Party demanded Prohibition, the very true Copy of the Libel depending in the Eccleſiaſtical Court, concerning the Matter wherefore the Party demandeth Prohibition, ſubſcribed or marked with his own Hand; and under the Copy of the ſaid Libel, ſhall be written the Suggeſtion wherefore the Party ſo

† Of the Nature of Prohibition and Conſultation, ſee hereafter, *Tit.* XLV.

de-

demandeth Prohibition: The Truth of which (* or at leaſt ſo much of it as is ſufficient whereon to ground a Prohibition, though the Suggeſtion be not ſhewn to be ſtrictly and wholly true) not being proved in ſix *Kalendar-Months*, a *Conſultation* ſhall be granted, and double Coſts and Damages given. *Ibid.*

Q. What Remedy is there againſt Quakers refuſing to pay Tithes, or Church-Rates, 7, 8 *Will.* III. *c.* 34?

A. Upon Complaint, they may be conven'd before two Juſtices; who ſhall examine and determine in all Caſes of or under 10*l.* and levy by Diſtreſs, in caſe of Refuſal to pay. By 1 *Geo. c.* 6. this Act is extended to the Recovery of any Right or Stipend belonging to the Church, *&c.* or to any Church-Rates, with Coſts not exceeding 10*s.*

Q. May the Perſon aggrieved Appeal?

A. Yes, to the Quarter-Seſſions, where if Judgment be continued, Coſts ſhall be given againſt the Appellant.

Q. May the Cauſe be removed by *Certiorari* or other Writ?

A. No, unleſs the Title of Tithes be in Queſtion.

Q. When was the Act made for the more eaſy Recovery of ſmall Tithes?

A. 7 & 8 *Will.* III. *c.* 6. for three Years; afterwards continued for ſeven Years, and 3 & 4 *Ann. c.* 18. it was made perpetual.

Q. What is the Tenor of that Act?

A. Small

A. Small Tithes of, or under the Value of 40 *s.* being with-held twenty Days after Demand, upon Complaint made in Writing to two Juſtices, neither of which ſhall be intereſted, they ſhall ſummon the Party in writing, and determine and adjudge the Caſe in writing, with Coſts not exceeding ten Shillings; and if the Sum is not paid in ten Days, it ſhall be levied by Diſtreſs, by the Conſtable, having a Warrant from the Juſtices, and after three Days detaining them, the Goods ſhall be ſold.

Q. Have Juſtices a Power to adminiſter an Oath in theſe Caſes?

A. Yes.

Q. What is included in this Act under the Notion of ſmall Tithes?

A. All and ſingular the Tithes commonly called Small Tithes, and Compoſitions, and Agreements, for the ſame, with all Offerings, Oblations, and Obventions.

Q. In what Time muſt Complaint be made?

A. Within two Years after the Tithes become due.

Q. Can there be any Appeal from the Juſtices?

A. Yes, to the Quarter-Seſſions, whoſe Judgment ſhall be final, unleſs the Title of Tithes be in Queſtion.

Q. What if Preſcription, *Modus*, or Compoſition be inſiſted upon?

A. Security muſt be given to pay Coſts, if the *Modus* be not allowed, and the Juſtices ſhall

ſhall forbear to give any Judgment in the Matter, and the Perſon complaining may be at Liberty to proſecute in any other Court.

Q. But may he not proſecute in any other Court after Judgment given?

A. Every Judgment given by the Juſtices ſhall be inrolled at the Quarter-Seſſions, which Inrollment ſhall be a Bar from other Remedy.

Q. What if a Perſon remove out of the County, before the Money adjudged is paid?

A. It ſhall, upon Certificate of the Juſtices, or one of them, who gave the Judgment, be levied by Warrant from any Juſtice, where he is an Inhabitant.

Q. Are they intitled to the Benefit of this Act who have begun their Suit in the Exchequer, or Eccleſiaſtical Court?

A. No.

Q. What are *Oblations?*

A. What may be properly called Oblations, are thoſe which *Lyndwood* deſcribes, *Accedentes ad Solennia Nubentium, Purificationes Mulierum, Mortuorum Exequias & alias ſolennitates divinas & populares, ſolebant aliquid certum offerre, utputa ipſorum quilibet, Denarium, obolum, vel quadrantem, aliamve rem qualemcunque.* From which cuſtomary Offerings, the Fees or Duties now payable on theſe Occaſions did probably ſpring, and may be thought a kind of Compoſition for them.

Q. When were the uſual Days of Offering?

A. Chriſt-

A. Chriſtmas, *Eaſter*, *Whitſuntide*, and the Feaſt of the Dedication of the Pariſh Church.

Q. What are thoſe which are commonly called *Eaſter Offerings?*

A. It has been ſaid, that what we call *Eaſter* Offerings, *viz.* ſo much certain to be paid by every Communicant, was a Compoſition for *Perſonal* Tithes, but ſince the ſame Statute, 2 & 3 *Edw.* VI. *c.* 13. which ſpeaks of Offerings at *Eaſter*, makes Proviſion for the Payment of Perſonal Tithes, under a ſeparate Head, the Eccleſiaſtical Dues, which by the *Rubrick*, every Pariſhioner is to pay the Miniſter at *Eaſter*, ſeem rather to be, partly ſuch Duties or Oblations, as were not immediately annexed to any of the forementiond Offices, and partly a Compoſition for the *holy Loaf*, which the Communicants were to bring and offer, and which is therefore to be anſwered at *Eaſter*, becauſe at that Feſtival every Perſon was indiſpenſably bound to Communicate.

Q. What other kind of Profits belong to the Church?

A. Penſions or Annuities, Portions of Tithes, Corrodies, Indemnities, Synodies, and Proxies †.

Q. How are theſe to be recovered?

A. Being of a Spiritual Nature, they are to be recovered * in the Spiritual Court, even though they have been claimed upon the Foot of Preſcription.

† Of Proxies or Procurations, *Vide* Tit. XLII.

Q. What

Q. What are *Indemnities?*

A. Penſions paid to the Biſhops, in Conſideration of Diſcharging Churches, United or Appropriated, from the Payment of Procurations.

Q. What are *Penſions?*

A. Payments due out of Religious Lands diſſolved, or by Virtue of an Ordinance made by the Ordinary, upon a Controverſy of Tithes, or the like, (as in the Endowment of a Vicar where one ſhall enjoy the Tithes, and pay to another a Penſion for them.)

Q. What Care was taken at the Diſſolution of the Religious Houſes, that the Penſions, and other Duties paid by them to Archbiſhops, and Biſhops, and other Eccleſiaſtical Perſons, ſhould be continued?

A. By 34, 35 *Hen.* VIII. *c.* 19. They are allowed to make ſuch Proceſs againſt the Occupiers *of the Land*, as they might have done before the Diſſolution, either in the Spiritual Court or at Common Law; and the Defendant being convict, they ſhall have Coſts and Damages.

Q. In Caſes where any of thoſe Duties were due from any Religious Houſe diſſolved, and the King did of new Incorporate a Society, and give them the whole Scite of ſuch Religious Houſe, with all Manors, *&c.* belonging to it, from whom are ſuch Duties payable?

A. From the new Corporation.

Q. If any Incumbent leave Arrearages of a Penſion, ſhall the Succeſſor be anſwerable?

A. * Yes, becauſe the Church itſelf is charged, into whatſoever Hand it comes.

Q. What is a *Corrody?*

A. An Allowance of Meat and Drink, Cloathing, Lodging, *&c.* for neceſſary Suſtenance, which might be aſſigned by every Founder of a Religious Houſe, in the ſame Houſe, to any Perſon that he ſhould appoint. Corrodies are turned into Penſions, and Money at this Day. It appears that Corrodies belong'd to Biſhops from Monaſteries, 34, 35 *Hen.* VIII.

Q. Where are Tithes generally ſued for of any conſiderable Value?

A. In the Courts of Equity, by *Engliſh* Bill, and for the moſt part in the *Exchequer*; but not upon the Statute for Treble or Double Value, for there can be no Suit in Equity for the Recovery of Double or Treble Value. But you may have the ſingle Value with *Coſts*, which unleſs the Value of the Tithes be very great, is as good as treble Value without Coſts.

Q. What are *Mortuaries?*

A. Mortuaries, (or Corſe-preſents, ſo called, becauſe it was uſual to bring the Mortuary along with the Corpſe when it came to be buried) were given for Recompence of Perſonal Tithes and Offerings, not paid through Ignorance, Negligence, or Fraud of the Pariſhioner; as the beſt, or ſecond-beſt Beaſt, *&c.*

They are due by Cuſtom only, and are now ſettled to be paid in Money.

Q. What is the Law at preſent with regard to Mortuaries?

A. Where Mortuaries are due by Cuſtom, he that dieth poſſeſſed of moveable Goods, to the Value of forty Pounds, and upwards, his Debts firſt paid, pays ten Shillings; if to the Value of thirty Pounds and under forty Pounds, ſix Shillings and eight Pence; if to the Value of ſix Pounds thirteen Shillings and four Pence, and under thirty Pounds, three Shillings and four Pence. Goods under ſix Pounds thirteen Shillings yield no Mortuary.

Q. Who are exempted from paying Mortuaries?

A. No Mortuary is to be paid by any *Feme covert*, Child, Perſon not keeping Houſe, Wayfaring-man, one not reſiding in the Place where he happens to die, for his Mortuary ſhall be paid in the Place where he had his moſt Abode.

Q. What is *Appropriation?*

A. Appropriation (becauſe the Profits of a Benefice are held in *Propriety*) is an Annexing a Benefice to the proper and perpetual Uſe of a Spiritual Perſon, or Corporation, (being Patrons of the Advowſon in Fee) and their Succeſſors.

Q. When did this Practice firſt begin?

A. This Evil has been growing in the Nation chiefly from the Time of the *Norman* Conqueſt, when the *Norman* Lords withdrew

the Tithes of their Manors from the Parochial Clergy (who were *Engliſh*, and, as ſuch, hated by them) and endowed with them the Monaſteries which they built for the *Norman* Monks. In other Nations it began more early.

Q. What was the Miſchievous Conſequence of this?

A. The Monks took little or no Care to make tolerable Proviſion for thoſe who attended the Cures, till 15 *Rich.* II. *c.* 6. upon the earneſt Petition of the Commons in Parliament, it was enacted, That in every Licence from that Time to be made, in the Chancery, of the Appropriation of any Pariſh Church, Proviſion ſhould be made expreſly for a proper Diſtribution to the Poor, and a competent Endowment for the Vicar of it. And afterwards by 4 *Hen.* IV. *c.* 12. That in every Church appropriate, henceforth a Secular Perſon ſhould be Ordained Vicar perpetual, Canonically Inſtitute, and Induct, and *Covenably endowed* by Diſcretion of the Ordinary.

Q. Are then Appropriations after that Time, to be declared now invalid, where no Endowment can be found?

A. No; becauſe where a Benefice hath been ever reputed and taken to be Appropriate, and a Vicar preſented, inſtituted and inducted as a Vicar, the Law will preſume that the Vicarage was lawfully endowed; for that *Omnia præſumuntur ſolenniter eſſe facta.*

Q. What is the Foundation of *Stipendiary Curacies*, where the Impropriators are bound

to provide Divine Service, but may do it by a Curate not inſtituted, but only *licenſed* by the Biſhop?

A. This happens where the Benefice was given *ad Menſam Monachorum*, and ſo, not appropriated in the common Form, but granted by Way of Union, *pleno jure*; and becauſe, *in that Caſe*, it was ſerved by a Monk of their own Body, and who was removeable at their own Pleaſure; and becauſe the Acts of Diſſolution gave the Lands to the King *in ſuch Manner and Form* as the Monks held them, they who derive from the Crown, have reckoned themſelves under no Reſtraint to preſent a Vicar to the Biſhop for Inſtitution, but to provide Divine Service, as the Monks did, by a *Licenſed* Curate. But though the Canon Law is clear, that ſuch Benefices as were united *Menſæ Monachorum, &c.* might be ſerved by *Monks* without Inſtitution, yet the Law alſo was, that, in Caſe ſuch Cures were ſupplied by *Seculars*, they muſt have Inſtitution; and there being now no Supply but by Seculars, it ſeems to follow, that *by Law* no Benefices can be now ſerved by Stipendiary Curates without Inſtitution. But the received Practice is otherwiſe.

Q. What was judged the fitteſt Time for the Appropriation of a Church?

A. When the Church to be appropriated was vacant.

Q. Was the Perſon appropriating, of neceſſity a *Spiritual* Perſon, ſo as no other might do it?

A. Yes; for Appropriation is in Effect an *Inſtitution*; with this Difference only, that it is *Perpetual*.

Q. Could Appropriations be made to other than Spiritual Perſons?

A. No; nor to Spiritual Perſons, but as Spiritual *Bodies*, Politick or Corporate, poſſeſſed of the Inheritance of the Advowſon to them, and their Succeſſors. For the immediate Conſequence of an Appropriation, is *perpetual Incumbency*.

Q. What Conſent was neceſſary to the making of an Appropriation?

A. The Conſent of the *King*, and of the *Patron*, and of the *Ordinary* who made it.

Q. Can a Church Appropriate become *Diſappropriate?*

A. * Yes; and that, not only by the Diſſolution of the Corporation, whereunto the Appropriation was firſt granted, but alſo by Preſentment; namely, when he who is Parſon appropriate, being alſo Patron of the Vicarage, doth preſent the Vicar to the Parſonage, this is a *Re-union* of the Vicarage and Parſonage, and the Preſentee ſhall have all the Tithes, and other Profits belonging to the Church.

Q. Do Tithes or Profits of any kind belong to the Vicar *de Jure?*

A. No;

A. * No; only by Endowment or Preſcription; there were no Vicarages at Common Law.

Q. When did Vicarages firſt begin?

A. When the Books of Common Law ſpeak of the *Beginning* of Vicarages, ſome fix it in the Reign of *Hen.* III. others in the Reign of King *John*; but there are Reaſons to believe the Practice more antient.

Q. Does the Vicarage by Endowment become a Benefice diſtinct from the Parſonage?

A. * Yes; and as he is endowed with ſeparate Revenues, and is now enabled by the Law to recover his Temporal Rights, without Aid of the Parſon or Patron, ſo hath he the whole Cure of Souls transferred to him, by Inſtitution from the Biſhop.

Q. But do not both the Parſon and Vicar in ſome Places receive Inſtitution to the ſame Church?

A. Yes, as it is in the Caſe of *Sine-Cures*.

Q. What was the Original of *Sine-Cures*?

A. The Rector, with proper Conſent, had Power to intitle a Vicar in his Church, to officiate under him, and this was often done; by which Means two Perſons were inſtituted to the ſame Church, and both to the Cure of Souls, and both did actually officiate. But the Rectors having been long excuſed from Reſidence, are, in common Opinion, diſcharged from the Cure of Souls, which is the Reaſon of the Name, and the Cure is ſaid in the

Law Books, to be in them *Habitualiter* only, and *Actualiter* in the Vicar.

Q. But did you not ſay they were *both* inſtituted to the Cure of Souls?

A. * Yes; and, in Strictneſs of Law, and with regard to the Original Inſtitution, the Cure is *Actualiter* in the Rector, as much as it is in the Vicar.

Q. In what Caſe may the Care of Souls be properly ſaid to be *Habitualiter* in one, and *Actualiter* in another?

A. Where a Rector or Vicar is Non-reſident, and the Ordinary appoints a Curate, and during ſuch Non-reſidency transfers upon him the Cure of Souls. For here the Diſcharge, in the Nature of it, is only *Temporary.*

Q. Does the Parſon, by making the Endowment, acquire the Patronage of the Vicarage?

A. Yes, the Advowſon of common Right is appendant to the Rectory; but Pariſhioners may preſcribe for the Choice of a Vicar, and the Advowſon may be *appendant* to a *Manor.*

Q. How might the Act of Endowment by the Biſhop be made?

A. * Either *in the Act of Appropriation*, or by a *ſubſequent* Act, and a ſeparate Inſtrument.

Q. What Uſe may be made of this Obſervation?

A. That the Clergy, in ſeeking for Endowments in the Regiſtries of Biſhops, or the Courts of Augmentation, may not neglect the Acts of *Appropriation*, nor deſpair of finding the

the Endowment, becauſe they find not a ſeparate Act, or Inſtrument of Endowment.

Q. How are Words in an Endowment, being doubtful, to be interpreted?

A. By Practice, and * to the Advantage of the Vicar. As where it appears to have been the Cuſtom for the Vicar to have Tithe-Hay, *Garba*, tho' in the common Acceptation it relates to Corn, ſhall be judged ſufficient to extend to Tithe-Hay; and *Alteragia*, to Tithe-Wood: And, in Favour of the Vicar, * it has been reſolved, that the Word *Manor* ſhould ſignify the *Precincts* of a Manor; and that he ſhould have Tithes of the Freeholders, as well as Demeſnes of the Manor, though he was endowed to have a third Part *Omnium Bladorum decimarum of ſuch a Manor*, and tho' the Freeholders (ſtrictly ſpeaking) are not Parcel of the Manor as ſuch.

Q. Can the firſt Endowment of Vicars be preſcribed againſt?

A. * No: Original Endowments are of ſuch Authority as no Time can deſtroy.

Q. Suppoſe a Vicar hath uſed, Time out of mind, or for a long Time, to take particular Tithes or Profits, and the original Endowment is produced, and they are not there, ſhall he loſe them in that Caſe?

A. * No: Becauſe, inaſmuch as every Biſhop had an indiſputable Right to *augment* Vicarages, as there was Occaſion; and this whether ſuch Right were reſerved in the Endowment

ment or not, the Law will presume, that this Addition was by way of *Augmentation*.

Q. How is the Loss of the original Endowment supplied?

A. By Prescription; *i. e.* if the Vicar hath enjoy'd this or that particular Tithe by constant Usage, the Law will presume that he was legally endow'd with it.

Q. Might the Endowment of a Vicarage be appropriated?

A. * With this only Exception, that it must not be to the Parson.

Q. Might Vicarages, tho' duly created, and of long Continuance, be dissolved?

A. * Yes, where the Appropriation had been made before, 15 *Ric.* II. and 4 *Hen.* IV. or where the Appropriation remained in a spiritual Hand, which was capable of the Cure.

Q. Is the King's Licence necessary for the *dissolving* a Vicarage into a Parsonage?

A. * Into a Parsonage Presentative, 'tis not necessary; into a Parsonage Appropriatory, it is, because he thereby loses his Title of *Lapse*.

Q. Shall the not presenting for a long Time be a Discontinuance of the Vicarage?

A. * No, something ought to be shewn of the Act of *Re-uniting*.

Q. Hath the Ordinary a Right to oblige Impropriators to augment Vicarages?

A. It is agreed on all Hands, that every Ordinary hath such Power over *spiritual* Impropriators; namely, to assign a *Congrua Portio* to the

the Vicar, and enforce the Allowance of it, by Sequeſtration and other Eccleſiaſtical Cenſures. But the Books of Common Law are peremptory, that ſince the Diſſolution of the Monaſteries, Impropriations are become mere *Lay-Fees*, or Inheritances of a meer *temporal* Nature: From whence they infer, that therefore all ſuch Poſſeſſions are intirely freed from ſpiritual Juriſdiction; and particularly, that the Ordinary hath no Power to make Augmentation of a Vicarage, out of any Rectory which is in the Hands of a Lay-Impropriator.

Q. What was done upon the Reſtoration of King *Charles* II. for the Augmentation of Vicarages?

A. The King ſent a Letter to the Biſhops, requiring them to employ their Authority and Power, which by Law belonged to them as Ordinaries, for the Augmentations of Vicarages, and Stipends of Curates. And the Number and Largeneſs of Fines rendering the Deſign moſt practicable at that Time, divers Archbiſhops, Biſhops, Deans and Chapters, and other Eccleſiaſtical Perſons, upon their renewing of Leaſes of Rectories, or Tithes impropriate, made divers Reſervations, beyond the antient Rent, intended for the Augmentation of the ſaid Endowments and Stipends; which were confirmed and made perpetual to them, and the Vicars and Curates adjudged to be in actual Poſſeſſion of them, by a particular Statute for that Purpoſe. 29 *Car.* II. *c.* 8.

Q. Were

Q. Were future Augmentations to be confirmed by that Act?

A. Yes; provided that no future Augmentation was to be confirmed by it, which ſhall exceed one Moiety of the clear yearly Value of the Rectory.

Q. What Care was taken for the better making appear the Certainty of ſuch Augmentations?

A. 'Tis enacted, by the Statute aforeſaid, That all Augmentations ſhall be regiſtered in a Book of Parchment, to be kept for that Purpoſe; which, being examined and atteſted by the reſpective Archbiſhop, Biſhop, *&c.* to be a true Copy of the original Leaſe or Grant, and that the Augmentation in the ſame was intended for ſuch Uſe, ſhall be as a Record, and an atteſted Copy of it good Evidence in the Law: And where Augmentations have not been entered in the Leaſe, they ſhall be entered as Agreements in the ſaid Book, and ſhall be good and available in Law.

TIT. XXXI.

Leaſes of Biſhopricks, Dignities, and Benefices.

Q. WHAT Reſtraints were there by Law upon the Leaſing of ſpiritual Promotions?

A. The Law did not think fit to truſt a ſingle Perſon, or ſole Corporation, with the Diſ-

Diſpoſition of Eſtates held in Right of the Church; and therefore, by Way of Reſtraint, appointed the *Aſſent and Confirmation* of others, without which their Grants ſhould not be valid againſt the Succeſſor.

Q. By whom were the Leaſes to be confirmed?

A. All Leaſes of Archbiſhops, and Biſhops, by the Dean and Chapter; all Leaſes of Archdeacons, Prebendaries, and the like, by Biſhop, Dean, and Chapter; and all Leaſes of Parſons and Vicars, by Patron and Ordinary. And without ſuch Confirmation, they expir'd with the Leſſor; and could not bind the Succeſſor, till the Statute 32 *Hen.* VIII. *c.* 28. commonly called the *Enabling Statute*: By which all ſuch *ſole Corporations*, except Parſons and Vicars, were enabled to let Leaſes for twenty-one Years, or three Lives, *without Confirmation*; provided that in ſuch Leaſes, the Conditions and Limitations of the ſaid Act were punctually obſerved.

Q. What were thoſe Conditions and Limitations?

A. 1. The Leaſe muſt be by Deed indented; therefore this Act does not extend to Copyhold Lands, which in their own Nature are demiſeable only by Copy. 2. It muſt begin from the Day of the making thereof. 3. If there be an old Leaſe in Being, it muſt be abſolutely (not conditionally) ſurrender'd or expir'd within a Year after the making of the new. 4. It muſt be for three Lives, (all wearing

wearing out together) or twenty-one Years; either the one or the other, and not both, or a double Leaſe. 5. As it muſt not exceed three Lives, or twenty-one Years, from the Day of making it, ſo it may be for fewer Lives, or a leſſer Term. 6. It muſt be of Lands and Tenements *Corporeal*, out of which a Rent may be reſerved; and not out of Incorporeal Things, or Things that *lie in Grant*, as Advowſons, Tithes, Fairs, Franchiſes, *&c.* 7. It muſt be of Lands and Tenements which have been *moſt commonly* letten (by one that was ſeized of the Inheritance) to Farm, or occupied by Farmers, by the Space of twenty Years next before the Leaſe was made; ſo that if it was lett for elven Years at one or ſeveral Times, within thoſe twenty Years, it is ſufficient. 8. the accuſtomed Rent, (or more) which hath been paid for twenty Years before, muſt be reſerved. 9. It muſt not be without Impeachment of Waſte. If theſe Limitations were obſerved, Leaſes might be made *without Confirmation*; but if not, Confirmation remained neceſſary as before: And *with Confirmation*, long Leaſes might be made by ſole Corporations, without being limited at all to the Conditions of this Statute, till the *Diſabling Acts* made in the Time of Queen *Elizabeth*.

Q. What are thoſe *Diſabling* Acts?

A. Firſt, Whereas Biſhops, notwithſtanding the Statute 32 *Hen.* VIII. might continue to make ſuch long Leaſes as they had uſually done, in Caſe thoſe Leaſes were *Confirm'd*;

By

By Statute 1 *Eliz. c.* 19. * they are *abſolutely* prohibited from granting any Leaſes, but for twenty-one Years, or three Lives, though *with Confirmation.*

Secondly, Whereas *Corporations aggregate* might always let long Leaſes *without any Confirmation*; and ſo might *ſole* Corporations *with Confirmation*, none but Biſhops being reſtrained by the fore-mention'd Statute; by Statute 13 *Eliz.* 6. 10, all *other* Corporations, ſole and aggregate, are put under the ſame Reſtraints that Biſhops were; as Maſters and Fellows of Colleges, Dean and Chapters of Cathedral or Collegiate Churches, Chapters where there are no Deans, Maſters of Hoſpitals and their Brethren, Dean, Archdeacon, Prebendary, Parſon, Vicar, *&c.*

Thirdly, Whereas ſole Corporations might make concurrent Leaſes, *without* Confirmation, where the old Leaſe was to expire within a Year, and, at *any* Time *with* Confirmation. By 18 *Eliz. c.* 11. no concurrent Leaſe ſhall be good, made by any *ſole* Corporation, Biſhops only excepted, unleſs the old Leaſe be expired within three Years.

Q. Of what Effect then is Confirmation at this Time?

A. It is of real Effect only to two Sorts of ſole Corporations; namely. 1. To Parſons and Vicars, who being ſpecially excepted out of the enabling Act, cannot, nor ever could, bind the Succeſſors without it; and, 2. To Biſhops, who not being included under the Reſtraint

Reſtraint 18 *Eliz. c.* 11. againſt concurrent Leaſes, may ſtill, as at Common Law they might, let ſuch Leaſes, at any Time, with Confirmation.

Q. What concurrent Leaſes are good?

A. * Biſhops may make concurrent Leaſes either according to Statute 32 *Hen.* VIII. *without Confirmation*, where the old Leaſe is to expire *within a Year*; or *with Confirmation at any Time* according to the Courſe of the Common Law. But new Leaſes made by *others* ſhall be void, if the old Leaſe be not expired or ſurrendred, or ended within three Years?

Q. If a Parſon or Vicar makes a Leaſe for three Lives, or twenty-one Years, of Lands accuſtomably letten, reſerving the accuſtomed Rent, ſhall it be good againſt their Succeſſors?

A. Not unleſs it be confirm'd by Patron and Ordinary. The common People have a Notion that a Parſon or Vicar may make a Leaſe for *three* Years, and bind their Succeſſors by it, without Confirmation, but it is void by their Deaths.

Q. What Caution is neceſſary upon this Account in drawing up the Leaſes of Parſons and Vicars, which are not confirmed?

A. If they be drawn up for a Term of Years *abſolutely*, without ſaying, if the Parſon *ſo long live, and ſhall ſo long continue Parſon*, and the Parſon dies, or reſigns, or is depriv'd, before the Term expires, the Leſſee may recover Damages, in an Action of Covenant againſt the Executors of the Parſon, for not

enjoying

enjoying his Term; but if thoſe Clauſes be added, he is ſafe.

Q. Can a Biſhop erect new Offices at Pleaſure, and aſſign Salaries to the Officers, and then make Grants to bind his Succeſſor?

A. No; the Statute 1 *Eliz. c.* 19. hath been, in Equity and Intention, extended to a Prohibition of *ſuch Grants*, though not directly included in the Terms of the Act. He can only grant ſuch as have been *antient* and *neceſſary*.

Q. But may he not augment the Fee or Salary belonging to an antient Office?

A. * No, the whole Grant is void, as well for the antient Fee, as the Overplus, unleſs the antient and new Fee are as *ſeveral* Grants, in ſeveral Sentences; * in that Caſe the Grant is good for the *Office* and *antient* Fee, and void only for the *New*.

Q. May he grant Offices of Service and Neceſſity for Life?

A. * Yes, but for one Life only, not for two or more Lives, *unleſs by Cuſtom*, where the Patent hath uſually been for two or more Lives, and had been ſo granted before the Diſabling Statute 1 *Eliz. c.* 19.

Q. Can a Biſhop make a * Grant of an Office in *Reverſion*, *i. e.* to have and enjoy ſuch Office after the Death of the preſent Grantee for Life?

A. Yes, upon the *Foot of Cuſtom* only, * and where there are particular Inſtances of ſuch Grants *before* the ſaid Diſabling Statute; or very near it, *after it*, if no Inſtances appear to

the contrary, upon a Preſumption that they followed the like Precedents, though now loſt.

Q. What is neceſſary to the End that unqueſtionable Grants of antient eſtabliſhed Offices may be good againſt the Succeſſor?

A. * They muſt in the firſt Place be Grants of the Office ſingly; for *two* Offices, which have been uſually granted apart, cannot be granted by *one* Patent, though to the ſame Perſon: And in the next Place, they muſt be *confirmed* by the Dean and Chapter, though they be but for one Life, becauſe they are Grants at Common Law, and muſt therefore paſs as they uſually did at Common Law before the Diſabling Statute.

Q. Do Grants of New Offices, if of *neceſſary Uſe* to the Biſhop, and of new Fees annexed to ſuch Offices, bind the Succeſſor?

A. * Yes, it has been held ſo.

Q. Are ſuch Grants as are by this Statute declared utterly void, Void againſt the Succeſſor, or againſt the Grantor alſo?

A. Againſt the Succeſſor. The Grantor may in many Caſes be bound *for his own Time.* Nay, even the Grant of Things not grantable, as of the next Avoidance, or of an Annuity, or of Tithes for three Lives, ſhall yet bind the Biſhop who makes the Grant, as hath been often determined.

Q. May not Houſes belonging to Eccleſiaſtical Perſons be Demiſed, notwithſtanding the Statute of 13 *Eliz. c.* 10. for more than twenty-one Years?

A. Yes, provided they are not the Dwelling-Houſes of ſuch Eccleſiaſtical Perſons, nor have Ground above ten Acres; provided alſo, that no Leaſe ſhall be made of Houſes in *Reverſion*, nor without the accuſtomed Rent, nor for longer than *forty* Years, nor without charging the Leſſee with the Reparation: Nor ſhall any Houſes be aliened, without an Equivalent in Fee-Simple. 14 *Eliz. c.* 11.

Q. Are Biſhops comprehended in this Statute?

A. No: Nor have they Power to lett Houſes, otherwiſe than according to 1 *Eliz.* * nor may they make Exchanges for any Recompence or Conſideration.

Q. Does the Confirmation of the Biſhops Leaſes require the Preſence of the Dean?

A. Yes; and that he be * properly Dean, and * that the Chapter be *Capitulariter Congregati*, in one certain Place, and not in ſeveral Places, at ſeveral Times.

Q. When muſt Confirmation of Biſhops Leaſes be made to be in due Time?

A. 1. * After the making of the Leaſe, and after an Intereſt is veſted in the Leſſee. 2. Before the Death of the Biſhop who made it, otherwiſe it comes when no Leaſe is in Being.

Q. Is it the ſame with reſpect to a Parſon's Leaſe?

A. * It hath been adjudged, that though it is not confirmed by the Biſhop and Patron in Being, when the Leaſe is made, but by a ſucceeding

ceeding Biſhop and Patron, the Confirmation is well, and the Succeſſor ſhall be bound.

Q. Is the Confirmation of the *preſent* Patron and Ordinary always ſufficient?

A. It hath been often laid down as a Fundamental Rule, that * a Confirmation, being in the Nature of a Charge upon the Advowſon, can operate no farther in order to the binding of the Succeſſor, than according to the Degree of Eſtate or Intereſt which the *Patron hath* who doth confirm; and therefore * if *Tenant in Tail* be Patron, the *Iſſue in Tail* ſhould alſo confirm. So Coparceners of an Advowſon muſt all join in the Confirmation, unleſs they have agreed to Preſent by Turns: And * if the Patron who confirms hath granted the next Avoidance, the Clerk of ſuch Grantee ſhall not be bound, without the Grantee's joining in the Confirmation.

Q. What if the Incumbency be by Uſurpation, and the Uſurper and Ordinary confirm the Parſon's Leaſe?

A. * Such Confirmation ſhall not avail, but the Leaſe ſhall be defeated by the true Patron upon Recovery of his Right.

Q. How are Parſons Leaſes voided by Non-reſidence?

A. By 13 *Eliz. c.* 20. No Leaſe is good after the Incumbent hath been abſent above eighty Days in the Year, * *Conjunctim vel Diviſim*; and the Incumbent ſo abſent ſhall loſe one Year's Profit, to be diſtributed, by the Ordinary, among the Poor of the Pariſh.

Q. What ſort of Non-reſidence brings the Incumbent under the Penalties of this Act?

A. * That only which is voluntary; if a Parſon be abſent involuntarily, by reaſon of Sickneſs, Suſpenſion, Inhibition, Ejectment, or other Coercion or Reſtraint, he is not abſent within this Statute.

Q. What if a Parſon has two Benefices? may he not Demiſe that on which he is not ordinarily Reſident?

A. He may, but * to his Curate only, that ſhall there ſerve the Cure for him; but ſuch Leaſe ſhall endure no longer than during ſuch Curate's Reſidence, without Abſence above forty Days in any one Year. *Ibid.*

Q. What is the Purport of the Statute 18 *Eliz. c. 6.* for the better Maintenance of the Colleges in both Univerſities, *&c.?*

A. Every Leaſe of any Farm or Lands, *&c.* which ſhall be let by any College or Hall, in either Univerſity, or by the Colleges of *Eaton* and *Wincheſter*, unleſs the *third Part* of the old Rent at leaſt, be reſerved in Corn, to be paid in kind (Wheat at ſix Shillings and eight Pence a Quarter or under, and Malt at five Shillings a Quarter or under) or in ready Money, according to the beſt Price in the reſpective Markets, the next Market-Day before the ſame ſhall be due, ſhall be void. Which Corn or Money ſo reſerved, ſhall be expended to the Uſe of the ſaid Colleges, and not let or ſold away, upon Pain of Deprivation to the Governor, and chief Ru-

lers of the ſaid Colleges, and all other thereto conſenting.

Q. Are Leaſes good which are made by the Majority of any Corporation?

A. Yes; and every local Statute to the contrary is void, 33 *Hen.* VIII. *c.* 27.

Q. Where muſt Rent be demanded?

A. At the Place where by the Leaſe it is appointed to be paid.

Q. When muſt the * Demand of Rent be made?

A. In due Time, *i. e.* ſuch a convenient Space before the Sun-ſetting of the laſt Day of Payment, as the Money may be tendred and received in.

Q. If the Reſervation of the Rent be at certain Feaſts, with Condition, that if it happen the Rent to be behind by the Space of a Week after any Day of Payment, *&c.* ---?

A. In that Caſe the Leſſor need not demand it on the Feaſt-Day, but the uttermoſt Time for the Demand is a convenient Space, as hath been ſaid, before the laſt Day of the Week.

Q. How muſt the Demand of Rent be made with regard to the Sum?

A. The *certain Sum*, with the Time when it was due, is to be expreſs'd; and * a Difference muſt be made, between the Rent then payable and demanded, and Arrears of Rent due before.

Q. May a Leaſe, otherwiſe voidable, be affirmed by a Succeſſor for his own Time?

A. Yes?

A. * Yes; by Acceptance of Rent, by Diſtraining or bringing an Aſſiſe of Rent, after the Death of the Predeceſſor, and alſo by bringing an Action of Waſte againſt the Leſſee.

Q. Does this Rule hold in all Caſes?

A. It holds only of ſuch Corporations as have the Fee-ſimple *abſolutely* in themſelves, as Biſhops, Deans and Chapters, Maſters and Fellows of Colleges, *&c.* Not of thoſe who have only a *Fee-ſimple Qualified, viz.* Parſons, Vicars, Prebends, *&c.*

Q. Are *their* Leaſes then abſoluely void by Death?

A. If they be not warranted by the Statutes, and are Leaſes for *Years*, they are abſolutely void by Death; but if the Leaſes be for *Lives*, they, as Eſtates of Freehold which are particularly favoured by the Law, are only Voidable, and ſuch as may be affirmed by the Acceptance of Rent, *&c.*

Q. If the Bailiff of a Biſhop accepts Rent without Order, or the Maſter of a College without expreſs Authority from the Corporation, does that affirm a voidable Leaſe?

A. No; whereſoever the Acceptance binds, whether a ſole or aggregate Corporation, it muſt, in order to ſuch Binding appear to be * their *own Act.*

Q. Does Acceptance by a Succeſſor avail, where the Leaſe is abſolutely and *ab initio* void?

A. * No; as in a Leaſe of Tithes, and of other Things not *Manurable*, for Lives, out of which no Rent, however reſerved, is recoverable.

TIT. XXXII.

Profits of VACATIONS, *and Remedies for* DILAPIDATIONS.

Q. WHO are intitled to the Profits of Vacant Benefices?

A. Antiently the Archbiſhops and Biſhops were entitled to them by Cuſtom, and * the King might take the Profits of the Deanry of a Free Chapel, and the Patron of a Donative the Profits of it, during the Time of Vacation; but by 28 *Hen.* VIII. *c.* 11. they belong to ſuch Perſon as ſhall be next thereunto Preſented, Promoted, Inſtituted, inducted or Admitted, towards Payment of the Firſt Fruits to the King.

Q. Does *Inſtitution* only give a Right to *enter upon and take* the Profits, as well of the Vacation, as others?

A. Yes; yet that alone which can give a Right to *ſue* for them is *Induction.*

Q. What Penalty is there upon thoſe who ſhall receive the Profits of the Vacation, and refuſe to reſtore them to the next Incumbent?

A. They

A. They ſhall forfeit the treble Value; one Half to the King, the other to the Incumbent. *Ibid.*

Q. What is the ordinary Way of managing the Profits of Vacation?

A. It is, by *Sequeſtration*, granted to the Church-wardens, or ſome Neighbouring Clergyman, (which ſeems much more proper and convenient) who are to account to the Succeſſor for the Profits, retaining ſo much as will pay the Cure during the Vacation, and the Charge of Collecting.

Q. What Allowance is to be made out of the Profits for ſerving the Cure?

A. The 'foreſaid Statute appoints a *reaſonable* Stipend or Salary, of which the *Ordinary* is the moſt *proper* and *competent* Judge; and if the Succeſſor finds himſelf aggrieved, he may be redreſſed by Appeals to the Superior Eccleſiaſtical Courts. But the Reaſonableneſs or Unreaſonableneſs of the Allowance is alſo become triable by Action at Law grounded upon this Statute.

Q. What if the Profits of the Vacation will not anſwer the Cure?

A. The Incumbent is to pay it within fourteen Days after Poſſeſſion. *Ibid.*

Q. What Care does the Church take to prevent Dilapidations?

A. The Ordinary, in Caſe of Dilapidations, hath a Right to take Cognizance of them during the Life of the Incumbent, either by voluntary Inquiſition, or upon Complaint made

to

to him, and to * enforce Reparation by the ſequeſtring of Profits, or by Eccleſiaſtical Cenſures even to Deprivation.

Q. What is comprehended under Dilapidations?

A. Not only decayed or ruinous Building, but Hedges, Fences, Mounds, *&c.* in the like Condition; and the felling of Wood and Timber, otherwiſe than for Repairs, or for Fuel, hath been adjudged to be Dilapidation, from which * the Incumbent may be reſtrain'd by Prohibition during his Incumbency, or he, or his Executors proſecuted, after he ceaſes to be Incumbent.

Q. In what Manner is the Ordinary to proceed in Inquiſition of Dilapidations?

A. Enquiry muſt be made by credible Perſons, Artificers, and Clergymen, upon Oath, and in his Preſence *who is concerned*, (he muſt be *cited* at leaſt) whether the Beneficiary, if alive; or his Executors, if he is dead: And an Eſtimate of the Charge being made, either by Inquiſition or Compoſition, the Dioceſan ſhall appoint Reparation, within a competent Term, at his Diſcretion.

Q. What Rule is to be obſerved as to the Proportion of the Profits to be ſequeſtred?

A. There is no certain Rule; but it is left to the Diſcretion of the Ordinary, according as particular Occaſions require: The general Practice is a *fifth* Part; which, by ſeveral Injunctions of King *Henry* VIII. *Edward* VI. and Queen *Elizabeth*, all Parſons, Vicars, *&c.* were

to

to lay out upon their Manſions and Chancels, being in Decay, till they ſhould be fully repaired.

Q. Where are Dilapidations to be ſued for?

A. Perſons aggrieved are referred wholly to the Eccleſiaſtical Courts; tho' a Notion has been advanced, that there lies an Action upon the Caſe in the Temporal Courts, * which ſeems not to be well grounded.

Q. What Remedy is there againſt fraudulent Deeds, to defeat the Succeſſor of Dilapidations?

A. The Succeſſor ſhall have the ſame Remedy againſt him to whom any ſuch fraudulent Deed is made, as if he were Executor or Adminiſtrator, 13 *Eliz. c.* 10.

Q. Is the laſt Incumbent, or his Executors, chargeable with the *whole* Dilapidations, in what Time ſoever they have grown?

A. The Statute, in the particular Caſe of a fraudulent Conveyance, ſeems (at firſt Sight) to limit the Suit to the Dilapidations that have grown in the Time of the laſt Incumbent; which, in caſe his Predeceſſor did alſo leave Dilapidations, and die inſolvent, cannot be known but by a regular Survey of the Defects at his firſt coming in, that thereby the reſpective Dilapidations of the two Predeceſſors may be diſtinguiſhed: But in other Caſes, the laſt Incumbent, or his Executors, are chargeable with the whole Dilapidations, in what Time ſoever they have grown.

Q. But

Q. But does not this in ſome Caſes prove a very great Hardſhip, particularly where a Burden of Dilapidations is left by one who died inſolvent, and the Succeſſor enjoys the Benefice but a ſhort Time, and dies?

A. 'Tis granted, this is a great Hardſhip; but in that Caſe the *Reformatio Legum* had provided the following Mitigation, (which may be an equitable Rule for the Ordinary to go by) *Spatium tamen Poſſeſſionis erit conſiderandum, quod ſi totum annum non Impleverit, nihil poſtulabitur, quantum autem anno fuerit amplius, ad id Æquitas Judicis Eccleſiaſtici Satisfaciendi rationem accommodabit.*

Q. Are Executors, who are chargeable with Dilapidations, bound to make Satisfaction for them before Debts and Legacies?

A. Before Legacies; but, * as we are told, the Common Law prefers the Payment of *Debts* before Damage for Dilapidations; tho' the repairing of Dilapidations is in the ſtricteſt Senſe a *Debt* to the Church; and it ſeems hard that private Debts ſhould be ſatisfied out of the Spoils of the Church, and the Church herſelf be denied the common Right of Reſtitution.

Q. What Care is taken, that Money recovered for Dilapidations be truly employ'd, in the Buildings and Reparations for which it was paid?

A. All Sums recovered by Sentence, Compoſition, or otherwiſe, ſhall be ſo employ'd within two Years after ſuch Receipt, upon

Pain

Pain of forfeiting to the King double as much as ſhall be ſo received, and not employ'd. 14 *Eliz. c.* 10.

Q. What if the Incumbent dies *within that Time* ---?

A. * The *Money* ſhall be paid by his Executors to the Succeſſor, and be laid out by *him* (not by the Executors) in Repairs.

Q. Is a Curate to be ſued or charged in the Spiritual Court for Dilapidations?

A. * No, becauſe, not coming in by Inſtitution and Induction, he is not properly an Incumbent.

TIT. XXXIII.

ADVOWSON *and Right of* PRESENTATION *to Eccleſiaſtical Benefices.*

Q. WHENCE ariſes the Right of Advowſon, or of preſenting a Clerk to the Biſhop, as oft as a Church becomes vacant?

A. From Foundation, Donation, or Ground; *i. e.* it was founded in the *Building*, or *giving Land* to build on, or *the Endowing* of ſuch a Church.

Q. Was not the Nomination of fit Perſons to officiate throughout the Dioceſe originally in the Biſhops only?

A. Yes: But when Lords of Manors were willing to build Churches, and to endow them with Manſe and Glebe, for the Accommodation

tion of *fixed* and *residing* Ministers, the Bishops on their Parts (for the Encouragement of such pious Undertakings) were content to let those Lords have the Nomination of Persons to the Churches so built and endowed by them, with Reservation to themselves of an intire Right to judge of the Fitness of the Persons so nominated; and what was the *Practice*, became in Process of Time the *Law* of the Church.

Q. Why is this Right of presenting called *Advowson*?

A. It was called *Advocatio*, and the Persons presenting *Advocati & Patroni*, because they were bound to protect and defend the Rights of their Church, and their Clerks, from Oppression and Violence.

Q. Of how many Kinds are Advowsons?

A. Of two Kinds; *Appendant*, and in *Gross*.

Q. What is an Advowson *Appendant*?

A. A Right of Presentation, dependant upon a Manor, Lands, or Tenements: And does pass in a Grant of the Manor, as an *Incident*; without saying, with the Appendants or Appurtenances thereunto belonging.

Q. How came the Right of nominating, which at first was annexed to the *Person* building or endowing the Church, to become by Degrees appendant to the *Manor* in which it was built?

A. Because the Endowment was supposed to be Parcel of the Manor, and the Church was built by the Lord for the Use of the Inhabitants of his Manor, and the Tithes of the Manor

Manor were alſo annexed to the Church; upon all which Accounts it was moſt natural for the Right of Advowſon, which was now become hereditary, to paſs with the Manor, or with ſuch Part of it as might at any time be granted or aliened with the Advowſon; to which, (whether the Whole or Part) it is therefore ſaid to be *Appendant*; * that is, *to the Demeſnes*, which are of perpetual Subſiſtence, but not to *Rents* or *Services*, which, (tho' Parcel of the Manor) *may* be extinguiſhed, and cannot therefore ſupport ſuch Appendancy.

Q. What is an *Advowſon* in *Groſs?*

A. It is a Right ſubſiſting by itſelf, belonging to a Perſon, and not to a Manor, Lands, *&c.* ſo that when an Advowſon appendant is ſevered by Deed or Will, from the Corporeal Inheritance to which it was appendant, then it becomes an *Advowſon in Groſs.*

Q. How many Ways may the Right of Advowſon, tho' appendant to a Manor, be ſeparated from it?

A. 1. If the Manor or other Thing to which it is appendant is granted, and the Advowſon excepted; 2. if the Advowſon is granted alone, without the Thing to which it was appendant: 3. if an Advowſon appendant is preſented to by the Patron, as an Advowſon in groſs.

Q. Can a Diſappendancy be temporary, *i. e.* may the Appendancy, tho' turn'd into Groſs, *return?*

A. * Yes. As, 1. If the Advowſon is excepted in a Leaſe of a Manor for Life, during the Leaſe

Leaſe it is in Groſs; but when the Leaſe expires, it is Appendant again. 2. If the Advowſon is granted for Life, and another enfeoffed of the Manor *cum pertinentiis*, in ſuch Caſe the Reverſion of the Advowſon paſſes, and at the Expiration of the Grant it ſhall be appendant. 3. If the Advowſon is allotted to one Co-partner, and the Manor to another, and ſhe who had the Advowſon dies without Iſſue, it is appendant again. 4. If *Tenant in Tail* aliens ſome Part of the Manor with the Advowſon, and the Alienee grants the Advowſon to a Stranger; or if a * *common Perſon* hath an Advowſon appendant, and a Stranger † *preſents* his Clerk, who is in by ſix Months; in both theſe Caſes the Advowſon is made *diſappendant*: But yet, if in the firſt Caſe the Land alien'd is recovered by Tenant in Tail, and in the ſecond the rightful Patron recovers, the Appendancy returns.

Q. Is the Right of Patronage a Temporal Ineritance?

A. It is a Truſt veſted in the Hands of the Patrons, by Conſent of the Biſhops, for the Good of the Church and Religion; nor does it follow, either from the Patron's being now veſted with that Right by Common Law, or from its being *annexed* to a Temporal Inheritance, that it is it ſelf a Temporal Inheritance, or ought, legally ſpeaking, to be con-

* No Diſappendancy is hereby made in Churches of the King's Preſentment. † Not ſo, if it is a Collation.

ſidered

ſidered otherwiſe than as *a Spiritual Truſt*; a Truſt of a Spiritual Nature, and for Spiritual Ends, reſting in the ſame Perſon to whom the Temporal Inheritance doth belong.

Q. What think you of the Notion and Practice of making Merchandize of Advowſons and next Avoidances?

A. It is not eaſily reconciled either to the Laws of the *Church*, which expreſly forbid it, or to the antient Laws of the *Land*, or to the Nature of Advowſons, conſidered (as they certainly ought in Reaſon and good Conſcience to be conſidered) in the Nature of meer Truſts for the Benefit of Mens Souls.

Q. What Argument have you that an Advowſon is not a Temporal Inheritance, nor ought legally to be conſidered as ſuch?

A. Beſides that the Foundation of the Right was *the Conſent of the Biſhop*, * it is a Rule in Law, that the Right or Property which the Patron hath in an Advowſon will not warrant a Plea (as it is in *Temporal* Property) that he is ſeized *in Dominico ſuo ut Feodo*, but only *in Feodo*: And * in a Caſe, where the Words of the Leaſe were Commodities, Profits, Emoluments, and Advantages to the Prebend belonging, it was adjudged that the *Advowſon* could not paſs by the ſaid Words; becauſe all of them implied Things *gainful, which* (as was added) *is contrary to the Nature of an Advowſon.*

Q. In what manner may Advowſon be granted?

A. Advowſon, being an Inheritance incorporeal, and not lying in manual Occupation, cannot paſs by Livery, but may be granted by Deed, or by Will; either for the Inheritance, or for the Right of one or more Turns, or for as many as ſhall happen within a Time limited.

Q. With what Limitations is this general Rule to be underſtood?

A. With regard to Advowſons in Groſs, next Avoidances, *&c.* it is to be underſtood with theſe two Limitations. * 1. That it extends not to Eccleſiaſtical Perſons, of any Kind or Degree, who are ſeized of Advowſons in Right of their Churches; nor to Maſters and Fellows of Colleges, nor to Guardians of Hoſpitals, who are ſeized in Right of their Houſes: All theſe being reſtrained (the Biſhops by 1 *Eliz.* and the reſt by 13 *Eliz. c.* 10.) from making any Grants, but of Things *Corporeal*, of which a Rent or annual Profit may be reſerved. 2. Where the Right of granting is abſolute and indiſputable, yet a *Grant* cannot be made by a common Perſon *whilſt the Church is void*, ſo as to be intitled thereby to ſuch void Turn: By the *King* it may.

Q. May the Avoidance that *ſhall happen next after*, or the *Inheritance of the Advowſon*, be granted when the Church is void?

A. * The *void Turn itſelf* being a meerly ſpiritual Thing, and annexed to the Perſon of the Patron, is not grantable; it being then, * as the Law-Books ſpeak, a Thing in Power

and

and Authority, a Thing in Action and Effect, the *Execution* of the Advowſon, and not the Advowſon. But the *next Avoidance* might be granted; till, by 12 *Ann. c.* 12. it was enacted, That if any Perſon ſhall for any Sum of Money, Reward, Gift, *&c.* in his own Name, or in the Name of any other Perſon, take or accept the next Avoidance of, or Preſentation to any Benefice with Cure of Souls, Dignity, *&c. and ſhall be preſented thereupon*, then every ſuch Preſentation ſhall be void, and ſuch Agreement deemed a Simoniacal Contract; and the Crown may preſent to ſuch Benefice and Dignity, *&c.* for that Time only; and the Perſon ſo corruptly taking or procuring ſuch Benefice or Dignity, *&c.* ſhall be adjudged a diſabled Perſon in Law to have and enjoy the ſame; and ſhall alſo be ſubject to any Pain, *&c.* inflicted by the Eccleſiaſtical Laws, in like manner as if ſuch corrupt Agreement had been made after ſuch Benefice, *&c.* had become vacant.

Q. In whom of common Right is the Advowſon of a Vicarage?

A. * In the Parſon: But it may be appendant to other Things, and become the Right of other Perſons, by Ordinance, or Compoſition, or Grant, or ſpecial Reſervation made at the Time of Appropriation.

Q. What is *Advocatio Medietatis Eccleſiæ?*

A. Advowſon of the Moiety of a Church, is when there be two ſeveral Patrons, and two ſeveral Incumbents of one Church; the

one of the one Moiety, the other of the other Moiety; and one Part, as well of the Church, as of the Town, allotted to the one, and the other Part thereof to the other.

Q. What is *Medietas Advocationis?*

A. Where there is but one Church, one Incumbent, and two Coparceners, who agree to present by Turns, each of them has *Medietatem Advocationis*; and if either be disturbed, she shall have a *Quare Impedit.*

Q. What Prerogative has the King in respect of Advowson, and Right of Presentation?

A. 1. * Advowson shall not pass from the Crown, when the King giveth or granteth a Manor, without express Mention either by Name, or *cum pertinentiis, or adeo plene & integre & in tam amplis modo & forma prout &c.* which have been adjudged equivalent to an express Mention. 2. *Nullum tempus occurrit Regi*; * Plenarty by six Months shall barr the Party that hath Right, but it shall not barr the King; as, if the King, by Award of the Court, doth recover his Presentation, tho' it be after the Lapse of six Months from the Time of the Avoidance, no Time shall prejudice him, so that he present within the Space of six Months after. 3. The King is Patron-Paramount of all the Benefices in *England*; so that he may present by Lapse, or upon Forfeitures, by Attainder, Simony, Outlawry, *&c.* 4. He hath also a Right to present to all the Dignities and Benefices of the Advowson of Archbishops and

Biſhops, during the Vacancy of the reſpective Sees. 5. The Church is not full againſt the King till Induction, againſt others by Inſtitution. 6. * Upon Promotion of any Perſon to a Biſhoprick in *England* or *Ireland*, the King hath Right to preſent to ſuch Benefices or Dignities as the Perſon was poſſeſſed of before ſuch Promotion, tho' the Advowſon belongeth to a common Perſon.

Q. Is this Right anſwered, and the Turn of the Crown ſatisfied, by the Grant of a *Commendam* to retain ſuch Promotions, or any Part of them, together with the Biſhoprick?

A. By a *Commendam* for Life, and for the Time of continuing in ſuch a Biſhoprick, the Turn of the Crown is anſwered, and in ſuch Caſe the proper Patron ſhall preſent upon Death or Tranſlation; but the Right of the Crown ſhall not be defeated by a *Commendam* granted for a Term of Months or Years, certain, and limited.

Q. Does this Right of the Crown, to preſent upon Promotion, defeat the Right of a Grantee who had the next Avoidance?

A. * Yes, for his Right was only to have *the Next*; and *That* he cannot have, and therefore he can have none.

Q. To what Benefices appertaining to the Crown hath the Lord Chancellor or Keeper of the Great Seal for the Time being a Right to Preſent?

A. To all under a certain yearly Value in the King's Books; antiently to all of twenty

Marks or under; but now to all of twenty Pounds or under, which Enlargement was probably made about the Time of the new Valuation, *Tempore Hen.* VIII.

Q. If a common Perſon uſurp upon the King, and his Clerk is inducted, how may the Benefice be made ſure to him?

A. * Altho' the King hath Right, and may remove him by due Courſe of Law, yet if ſuch Clerk obtain the King's Confirmation, under the Great Seal, the Benefice is ſure to him againſt the King.

Q. If the King himſelf Preſent, and revoke ſuch Preſentation before Induction; and, after, the ſame Preſentee is inſtituted and inducted, ſhall the King's Ratification be good, upon his ratifying the Incumbency to the Preſentee?

A. No: Becauſe the Preſentation being revoked, the Clerk was never in, *ex Preſentatione Regis*, and ſo there was really no ſuch Title to be ratified.

Q. How is the Law with regard to Coparceners, or Joint-tenants, or Tenants in Common, having made Partition to preſent by Turns --- ?

A. * Each ſhall be ſeized in Law, of his or her ſeparate Part of the Advowſon, to preſent in their Turn. 7 *Ann. c.* 18.

Q. What is Preſentation by *Lapſe*?

A. Lapſe is a Devolution of Patronage from the Patron to the Biſhop, as Ordinary; from the Biſhop to the Metropolitan, as Superior;

rior; from the Metropolitan to the King, as Patron-Paramount.

Q. What is the Term or Space in which Title by Lapſe accrues ſucceſſively to the fore-mentioned Superiors?

A. * Six *Kalendar*-Months, the Day the Church becomes void not being taken into the Account.

Q. Muſt the Patron have Notice of the Voidance? Or is the Time of Lapſe to be accounted from that Notice?

A. The Common Law makes this Diſtinction; where the Avoidance is occaſioned by an Act between the Ordinary and the Incumbent, as, in Caſe of Deprivation and Reſignation, *Lapſe* ſhall incur from Notice given by the Biſhop, or if he die, by his Succeſſor: But where it is occaſioned by the Hand of God, as in caſe of Death; or by the Act of the Incumbent, as in caſe of Ceſſion; no Notice need be given, but the Patron is bound to take Notice of it, and ſo *Lapſe* ſhall incur from the Time of Death or Ceſſion.

Q. Does Lapſe incur without Notice in any other Caſe?

A. Yes; * where a Spiritual Perſon preſents an *Illiterate* Clerk, and he is refuſed: Becauſe the Law ſuppoſes *ſuch* to be Judges of the Abilities of their Clerk, and that therefore they *ought not* to have preſented an Inſufficient Clerk.

Q. If a Clerk is refuſed for want of *Abilities*, or for *Immorality*, ſhall the Patron have Notice?

A. * Tho' the Patron ought to have *Notice*, that he may preſent another in due Time, yet, if he neglect, the Lapſe ſhall incur from Death or Ceſſion, and not from the Time of Notice.

Q. If Lapſe happens thro' the Default of the Biſhop, as if he will not award a *Jure Patronatus* when required, or will not examine the Clerk, or refuſes him without Cauſe, and the Church becomes litigious, ſhall it incur in that Caſe?

A. * No: But if he does what is his Duty, upon a Preſentation made to him, and refuſes with good Cauſe, and is not named in the *Quare Impedit*; or if no Preſentation is made, and yet a *Quare Impedit* is brought againſt Patron and Ordinary, the Lapſe ſhall incur, and his Collation thereupon ſhall be good.

Q. Shall it avail the Plaintiff in the *Quare Impedit*, that he *recovers* within ſix Months, unleſs within the ſaid Term the Biſhop *receives* the Writ?

A. No: Nor that he brings a *Writ of Error*, unleſs, within the ſix Months, he alſo brings a Writ of *Quare Incumbravit*.

Q. Can Title by Lapſe accrue to the Metropolitan, or King, where it hath not *firſt accrued to the immediate Ordinary?*

A. No,

A. * No, even though the Lapſe be loſt by Default of the Ordinary; as for want of giving Notice, or the like: And for the ſame Reaſon, if a Clerk be inſtituted, and remains eighteen Months without Induction; though Inſtitution is no Plenarty againſt the King, yet being ſo againſt the Biſhop, no Title by Lapſe ſhall accrue to the King.

Q. If the Biſhop be Patron and Ordinary, ſhall he have a double Time to preſent in?

A. No, only ſix Months.

Q. If Title by Lapſe accrues to the Biſhop, and he dies, or is tranſlated, or deprived, before he takes the Benefit of it, to whom is the Devolution?

A. * To the Metropolitan, as he is *Guardian of the Spiritualties*; and as this is not an Intereſt, but a meer ſpiritual *Truſt*.

Q. Lapſe accruing to the Biſhop in a Metropolitical Viſitation, ſhall he loſe the Benefit of it?

A. * No: He may preſent his Clerk, during his Inhibition, to the Archbiſhop for Inſtitution, inſtead of Collating by his own Authority.

Q. If *after Lapſe* to the Ordinary, or Metropolitan, the Patron preſent to the Ordinary, *before the Church is filled*, is he bound to receive his Clerk?

A. * All the Law-Books agree in the Patron's Right to have his Clerk admitted. But after *Lapſe to the King*, * the Patron is wholly diſabled from preſenting; and if he do preſent, and

and his Clerk is inſtituted and inducted, the King may remove him by *Quare Impedit*. But if in ſuch Caſe, the Patron's Clerk is ſuffer'd *to die* incumbent, the King's Turn is ſerv'd, and he hath loſt the Advantage of the Lapſe; not ſo in Caſe of Reſignation.

Q. Is there Lapſe from the King?

A. No, there is no Remedy againſt a Neglect in the Crown to fill the vacant Churches, but only the Ordinary's ſequeſtring the Profits of the Church, and appointing a Clerk to ſerve the Cure.

Q. What Diſabilities are Popiſh Recuſants under, with regard to Preſentation?

A. By 3 *Jac.* I. *c.* 5. Every Recuſant Convict, during his Recuſancy, ſhall be utterly diſabled to preſent to any Benefice, with Cure, or without Cure, Prebend, or other Eccleſiaſtical Living, or to collate or nominate to any Free-School, Hoſpital, or Donative whatſoever; and to grant any Avoidance to any Benefice, Prebend, or other Eccleſiaſtical Living: And the Chancellor and Scholars of the Univerſity of *Oxford*, ſhall have the Preſentation, Nomination, Collation and Donation of and to every ſuch Benefice, *&c.* within the Counties of *Oxford*, *Kent*, *Eſſex*, *Middleſex*, *Suſſex*, *Surrey*, *Hampſhire*, *Berkſhire*, *Buckinghamſhire*, *Glouceſterſhire*, *Worceſterſhire*, *Staffordſhire*, *Warwickſhire*, *Wiltſhire*, *Somerſetſhire*, *Devonſhire*, *Cornwal*, *Dorſetſhire*, *Herefordſhire*, *Northamptonſhire*, *Pembrokeſhire*, *Carmarthenſhire*, *Brecknockſhire*,

ſhire, *Monmouthſhire*, *Cardiganſhire*, *Montgomeryſhire*, the City of *London*, and in every City and Town, being a County of itſelf, within the Precincts of any of the Counties aforeſaid.

The Chancellor and Scholars of the Univerſity of *Cambridge*, ſhall have the Preſentation, *&c.* to all within the Counties of *Hartfordſhire*, *Bedfordſhire*, *Cambridgeſhire*, *Huntingdonſhire*, *Suffolk*, *Norfolk*, *Lincolnſhire*, *Rutlandſhire*, *Leiceſterſhire*, *Darbyſhire*, *Nottinghamſhire*, *Shropſhire*, *Cheſhire*, *Lancaſhire*, *Yorkſhire*, the County of *Durham*, *Northumberland*, *Cumberland*, *Weſtmorland*, *Radnorſhire*, *Denbighſhire*, *Flintſhire*, *Carnarvonſhire*, *Angleſyſhire*, *Merionethſhire*, *Glamorganſhire*, and in every City and Town, *&c.* therein.

Q. What Proviſo is there in the Statute, concerning the Perſon to be preſented?

A. No ſuch Benefice ſhall be granted to any Perſon, having any other Benefice with Cure of Souls; ſuch Preſentation being declared utterly void: And if any Perſon ſo preſented, ſhall be abſent from his Benefice Sixty Days in a Year, it ſhall be void.

Q. If a Living become vacant during Conviction of a Recuſant, and he afterwards conformeth or dieth, is the Preſentation ſtill in the Univerſity?

A. Yes, the Univerſity ſhall preſent, *hac vice*, notwithſtanding.

Q. Does the Crown claim the Right of preſenting to theſe Livings in any Caſe?

A. Yes,

A. Yes, in one, *viz.* where Seizure has been made by the King (according to the 29 *Eliz. c.* 6. and 3 *Jac.* I. *c.* 4. whereby he is impower'd, upon Default of Payment of 20*l. per* Month, to ſeize two Parts of the Lands, Tenements, *&c.* of Recuſants convict) of two Parts of a Manor, to which an Advowſon was Appendant, and after that, of the Advowſon, as Part of the King's two Parts.

Q. Are no Papiſts diſabled from preſenting, but ſuch as are Recuſants convict?

A. By 1 *Will. & Mar. c.* 26. Every Perſon who ſhall refuſe to ſubſcribe the Declaration againſt Tranſubſtantiation, *&c.* 1 *Will. & Mar. c.* 15, when the ſame ſhall be tendered by any two, or more Juſtices of the Peace; or upon Notice given to appear, ſhall refuſe or forbear to appear before them, ſhall, thereupon have his Name, Sirname, and uſual Place of Abode, certified and recorded, at the General Quarter-Seſſions, and every ſuch Perſon ſhall be diſabled to preſent, as if he were a Popiſh Recuſant convict, and the Univerſity ſhall have the Preſentation.

Q. May not a Perſon preſent, who is ſeiz'd of an Advowſon in Truſt for a Popiſh Recuſant, or Perſon diſabled?

A. No; the Preſentation ſhall be in the Univerſity; and in Caſe any Truſtee, Mortgagee, or Grantee of any Avoidance for any Recuſant, or diſabled Perſon, ſhall preſent, without giving Notice of the Avoidance, in Writing, to the Vice-Chancellor of the Univerſity,

ſity, to whom the Preſentation ſhall belong, within three Months after, he ſhall forfeit 500*l.* to the Univerſity. And by 12 *Ann. Seſſ.* 2. *c.* 14. Every Papiſt, or Child, not being a Proteſtant, under the Age of 21 Years, being the Child of a Papiſt; and every Mortgagee, Truſtee, *&c.* for any ſuch Papiſt or Child, ſhall be diſabled, and the Preſentation ſhall be in the Univerſities, as above.

Q. What Care is taken by that Statute for the Diſcovery of fraudulent Truſts?

A. As often as any Preſentation ſhall be brought to an Archbiſhop, Biſhop, *&c.* from any Perſon reputed to be, or whom the Biſhop ſhall ſuſpect to be a Papiſt, or Truſtee to any one, making Profeſſion of that Religion, the Biſhop may tender to the Perſon, (if preſent) the Declaration againſt Tranſubſtantiation 25 *Car.* II. to be ſubſcribed; and if abſent, he may, by Notice in Writing to be left at the Habitation of ſuch Perſon, appoint a convenient Time and Place for him to appear before him, or before ſome other Perſon, having Authority by his Commiſſion, under his Seal of Office, and then tender the Declaration; and if he ſhall refuſe to make ſuch Declaration, or not appear, the Preſentation ſhall be void, and the Biſhop ſhall give Certificate thereof within Ten Days to the Vice-Chancellor of the Univerſity to whom the Preſentation would of Right belong, if ſuch Perſon ſo preſenting, had been a Popiſh Recuſant convict; and the Univerſity ſhall preſent.

The

The Biſhop, *&c.* is likewiſe requir'd to examine the Perſon preſented, on Oath, before he give him Inſtitution, whether to his Knowledge, or Belief, the Perſon who made ſuch Preſentation, be the real Patron, and made it in his own Right; or whether he be not a Truſtee for a Papiſt, *&c.* And if ſuch Perſon ſo preſented refuſe to be examined, or not anſwer directly, ſuch Preſentation ſhall be void. Alſo the Chancellor and Scholars of the Univerſities may exhibit their Bills in Equity for the Diſcovery of ſuch fraudulent Truſts againſt ſuch Perſon preſenting, *&c.* or any other who they have cauſe to ſuſpect may be able to diſcover ſuch ſecret Truſt; and alſo ſue any Writ of *Quare Impedit*, by their proper Names of Incorporation.

Q. Is a *Caveat* of any Force, which is entered, by one who ſuſpects that another will uſurp his Right, during the Life of the Incumbent?

A. The Canon and Civil Law allow a *Caveat* to be entered *quia veretur Dammum futurum*; but * it is of no Force in this Particular, becauſe contradicted by the *Common* Law.

Q. Is it then adviſeable in ſuch Caſe to enter a Caveat before the Incumbent dies?

A. It will be a Reſtraint upon the Ordinary from admitting any Clerk haſtily, tho' *not in Law*, yet in Equity and Prudence.

Q. Are Admiſſion, Inſtitution, and Induction good in Law, notwithſtanding the Entry of a Caveat to the Contrary?

A. Yes.

A. Yes. They ſhall ſtand to all Intents and Purpoſes, by the Rules of the *Common Law*, in the Eye of which, the Caveat is ſaid only to be a Caution for the Information of the Court, but that it doth not preſerve *Jus illæſum*, ſo as to null all ſubſequent Proceedings; nor hath it ever been determined, that a Biſhop became a *Diſturber*, by giving Inſtitution, without Regard to a *Caveat*: On the Contrary 'tis ſaid, that the Common Law hath nothing to do with a *Caveat*.

Q. What is *Jus Patronatus*?

A. An Enquiry which the Biſhop makes concerning ſeveral Matters relating to the Right and Title of a Patron who hath preſented a Clerk to him, in order to Admiſſion and Inſtitution; which, tho' antiently iſſued of Courſe, upon every Preſentation made, is now grown *occaſional* only, when Churches happen to be *litigious*.

Q. What makes a *Church litigious*?

A. When two different Perſons are preſented to it, or the ſame Perſon, ſeverally, by two Patrons.

Q. When a Church is litigious, what Courſe muſt the Party take who prays Inſtitution, and is refuſed, or delayed?

A. He hath a Right to require the Biſhop to award a *Jure Patronatus*.

Q. What if the Biſhop refuſes to award accordingly?

A. He brings upon himſelf divers Inconveniences: He becomes a Diſturber, and he hinders

hinders the Lapſe, if the Clerk is not admitted in ſix Months; and * if ſuch Patron makes good his Title, by due Form of Law, and did not name the Biſhop in the *Quare Impedit*, he may have an Action upon the Caſe againſt the Biſhop, and recover the Coſts and Damages he hath ſuſtained, by reaſon of a wrongful Admiſſion of the Biſhop, without the awarding of a *Jure Patronatus*, as aforeſaid.

Q. What if the Biſhop happens to admit him, who, upon Trial, appears to have the better Title?

A. * Then the other is without all Remedy againſt the Biſhop.

Q. Where a Church is litigious, may each of the contending Parties ſingly demand a *Jure Patronatus*?

A. Yes.

Q. May a *Jure Patronatus* go, where two ſeveral Patrons, claiming by ſeveral Titles, preſent one and the ſame Perſon, ſeverally, to a Church?

A. Yes, that the Biſhop may know upon whoſe Title he is to inſtitute; *that* being a Circumſtance which always is, or ought to be, diſtinctly mentioned in the Records of the See, as Part of the Entry of Inſtitution.

Q. When the *Jure Patronatus* is awarded, how is it to be executed?

A. According to the Forms of Proceeding in the Eccleſiaſtical Courts.

Q. What are thoſe Forms?

A. The

A. The Biſhop, if he pleaſes, may ſit himſelf as Judge, but the uſual Way is by Commiſſion iſſued to his Chancellor, or to ſuch other Perſon or Perſons, as he ſhall judge proper. 2. A *Monition* to the Patrons and Clerk immediately concern'd, to appear before ſuch Commiſſioners, in the Church that is litigious, on a certain Day. 3. A General *Citation of all Oppoſers*, to be fix'd to the Door of the Church, in Time of Divine Service. 4. A *Citation* of a *Jury* of Six Clergymen, and Six Laymen of the Neighbourhood, or of as many more as the Biſhop pleaſes, the Proportion being obſerv'd of Clergy, and Laity, that there be as many of one Sort, as of the other. And theſe are bound to appear, under Pain of Spiritual Cenſures; the Clergy of Sequeſtration, and the Laity of Excommunication; and if there be Six of each, the reſt are pronounced *Contumacious*, and the Court proceeds. 5. The Clergy and Laity who are of the Jury, are to be *ſworn* to make faithful Enquiry, viz. Firſt a Clerk, and then a Layman. 6. Articles, or Heads of Enquiry, to be deliver'd to them; as, whether the Church be void, and how it became ſo? Who preſented laſt, and at the two foregoing Turns; and whether in their own Right? Who hath the Inheritance of the Advowſon? Who ought to preſent to the void Turn? With ſuch other Circumſtances, as the Biſhop ſhall ſee Cauſe to inquire into. 7. The Parties, or their *Counſel*, to ſet forth their Titles, and

produce their Evidences. 8. The Verdict to be given either the ſame Day, or at ſuch other Time and Place, as the Judge ſhall aſſign.

Q. Is the Biſhop bound to admit and inſtitute the Perſon in whom the Right is found?

A. Not abſolutely; nor is the Admiſſion and Inſtitution of another void in Law, but this is (generally ſpeaking) the faireſt and moſt impartial Way; and the Biſhop, by doing otherwiſe, brings upon himſelf the Inconveniencies which accrue upon the Refuſal to award a *Jure Patronatus*, as above.

Q. What if the Jury are equally divided, or give a Special Verdict, or no Verdict; or if (where two Patrons have each a *Jure Patronatus*,) there is a Verdict in Favour of each Patron?

A. It ſeems in theſe Caſes, that the Biſhop, (inaſmuch as he hath done his Duty) may *refuſe both*, without ſubjecting himſelf to any of the ſaid Inconveniencies: Tho' it is affirmed by ſome, that in ſuch Caſes he may award a Second *Jure Patronatus*.

Q. At whoſe Coſts ſhall the *Jure Patronatus* be ſued?

A. At the Coſts of the Party, or his Clerk, and not of the Biſhop.

Q. Who is to Name the Commiſſioners?

A. * The *Civilians* ſay, that the Commiſſioners ſhall be named by the Parties, and they only ſhall be prejudiced by the Commiſſioners Neglect; the moſt *uſual* Way is for the Biſhop to do it.

Q. What

Q. What is Uſurpation of a Benefice?

A. * When a Stranger that hath no Right preſenteth to a Church, and his Clerk is admitted and inſtituted, he is ſaid to be an *Uſurper*, and the wrongful Act that he hath done, is called *Uſurpation.*

Q. What Remedy is there againſt Uſurpation?

A. * The true Patron, within Six Months, may bring his Writ of *Quare Impedit*, or *Darein Preſentment* (as the Caſe requires) and recover his Preſentment and Poſſeſſion of the Advowſon; but if neither of theſe Writs be brought *within* the Six Months, (*i. e.* ſo as to bear *Teſte* within that Time) the Incumbent is in for Life, and the Uſurpation compleat, except where the King is Patron.

Q. Does an Uſurpation, when compleat, diſplace the Eſtate or Intereſt of any Perſon, intitled to an Advowſon, and turn it to a Right?

A. No; the Patron may preſent or maintain his *Quare Impedit* upon the *next* or any *other* Avoidance, notwithſtanding ſuch Uſurpation.

Q. Does a Preſentation that is void in Law, (as is the Caſe of Simony *&c.*) make a Uſurpation againſt the Patron?

A. No; nor where, between the Uſurper and the Perſon upon whom the Uſurpation is made, there is Privity in Blood (as in the Caſe of Coparceners) or Privity in Eſtate, as between Leſſor and Leſſee, Grantor and

Grantee, Joint-Tenants, and Tenants in common.

Q. What is Intruſion?

A. When a Clerk procures Inſtitution to a Church that is *full* already, upon a falſe Suggeſtion of the Incumbent's Death, Ceſſion, *&c.*

Q. If an Intruder getteth Poſſeſſion, and holds it by a ſtrong Hand, and great Power of the Laity, *vi & armis*, againſt the Spiritual Authority; how is ſuch Force removeable?

A. * By the Writ *de vi Laica amovenda*, which is uſually iſſued upon a Certificate of the Biſhop into Chancery, touching ſuch Force and Reſiſtance, and may alſo be obtained upon a Surmiſe of him that is immediately griev'd.

Q. What Proviſion does the *Spiritual Law* make againſt Intruſion?

A. By a Conſtitution of *Othobon*, no Biſhop ſhall admit a Clerk, but upon authentick Proof of a real Vacancy, upon Pain that the Inſtitution be invalid and null, and Satisfaction made to the Incumbent, with Suſpenſion of the Biſhop from Inſtitution and Deprivation, and Incapacity of the Intruder, being obſtinate, to take any Benefice in the Dioceſe where he offended.

Q. What Time has the Biſhop allowed him to enquire and inform himſelf of the Sufficiency and Qualities of every Miniſter that is preſented to him for Inſtitution?

A. He

A. He had anciently *two Months*, but by the 95th Canon, he has now only Eight and Twenty Days; till which be expired, no *Double Quarrel* ſhall be granted.

Q. What is *Double Quarrel?*

A. When a Clerk, who is preſented to a Benefice, offers himſelf to the Biſhop, or other Perſon having Power for Inſtitution, and is refuſed, or unreaſonably and illegally delay'd, he may appeal to the immediate Superior, (to the Archbiſhop, when the Ordinary refuſes, and to the Court of Deligates, when the Archbiſhop refuſes) and thereupon obtain an Inſtrument directed to the Ordinary, and call'd *Duplex Querela*, (in *Engliſh* improperly render'd Double Quarrel,) containing a Monition to inſtitute within a certain Day; or if he refuſes then, to appear and ſhew Cauſe why he doth not; with an Inhibition that nothing be done, *pendente Lite*, to the Prejudice of the Party complaining. This being duly intimated to the Biſhop, and the Clerk offering himſelf three Times, at convenient Diſtances, within the Space aſſign'd; if the Biſhop neither obeys nor appears, he is pronounced Contumacious, and Inſtitution is decreed, and given by the Superior. But if the Biſhop appear by himſelf, or Proxy, and alledges Matter of Spiritual Cognizance, as, the Church is full, or the Clerk Immoral or Inſufficient, then the Superior Court proceeds to Trial; and as the Matter appears, gives Judgment for or againſt the Inſtitution.

* But if the Archbiſhop doth decree and grant Inſtitution to ſuch Clerk, and cauſe him to be *Inducted*, and the Biſhop and Patron of another Preſentee, ſue before the Delegates to void the Inſtitution, a Prohibition will be granted; becauſe Induction, giving a Temporal Right, is not to be avoided, but by a Suit at Common Law.

Q. What Remedy is there for gaining Poſſeſſion, by *Writs*, in the *Temporal* Court?

"*A.* 13 *Ed.* I. *c.* 5. Of Advowſons of "Churches there be three Original Writs; "that is to ſay, one *Writ of Right*, and two "of Poſſeſſion, which be *Darrein Preſent-* "*ment*, and *Quare Impedit.*" And in Purſuance of the two laſt, there is another call'd *Ne admittas*, and upon Neglect of that, a *Quare Incumbravit.*

Q. What is * a *Writ of Right?*

A. A Writ by which the Inheritance of the Advowſon might be recover'd, but the Incumbent could not be remov'd.

Q. What is * a Writ of *Darrein Preſentment?*

A. A Writ (called in *Latin*, *Aſſiſa Ultime Preſentationis*) which lieth, where a Man or his Anceſtor, hath preſented a Clerk to a Church, and after (the Church becoming void, by his Death or otherwiſe,) a Stranger preſents his Clerk to the ſame Church, in Diſturbance of him who had laſt preſented.

Q. What is a Writ of *Quare Impedit?*

A. This Writ lies where one hath an Advowſon, and the Parſon dies, and another preſents

preſents a Clerk, or diſturbs the rightful Patron to preſent; and * it was provided chiefly for the Sake of *Purchaſers of Advowſons*, who could not have the Writ of *Darein Preſentment*; but ſo, that all who may have that Writ, may have this of *Quare Impedit*, if they pleaſe.

Q. What Time is allow'd for the bringing of a Writ of *Quare Impedit*, or *Darein Preſentment*?

A. If the rightful Patron bring his Action within Six Months after the Avoidance, it is maintainable by 13 *Ed.* I. *c.* 5. otherwiſe not: Only the King may have his *Quare Impedit* when he pleaſes, and that whether he claimeth *Jure Coronæ*, or in the Right of a Subject.

Q. What is a * *Ne Admittas*?

A. A Writ to the Biſhop to forbid Admiſſion where one hath an Action of *Darein Preſentment*, or *Quare Impedit* depending in the Common Pleas, and he ſuppoſeth that the Biſhop will admit the Clerk of the Defendant, pending the Plea betwixt them.

Q. When muſt this Writ be ſued for?

A. * Within *Six Months* after the Avoidance, for after Six Months he ſhall not have this Writ; becauſe then the Biſhop may preſent for Lapſe, and therefore it is in vain then to ſue for the Writ, becauſe the Title to preſent is devolv'd to the Biſhop.

Q. What if, notwithſtanding the *Ne Admittas*, the Biſhop doth admit the Clerk of any other Perſon, pending the Suit;

A. If he who brought it recovers, he ſhall have a Writ of * *Quare Incumbravit*; and if it be found by Verdict, that the Biſhop hath incumbred the Church, after the *Ne Admittas* deliver'd to him, and within Six Months after the Avoidance, Damages are to be awarded to the Plaintiff, and the Biſhop directed to diſincumber the Church.

Q. In what manner are Damages to be awarded upon Writs of *Quare Impedit* and *Darein Preſentment?*

A. By 13 *Ed.* I. *c.* 5. If the Time of Six Months paſs by the Diſturbance of any, ſo that the Biſhop doth confer to the Church, and the true Patron loſeth his Preſentation, for that Time, Damages ſhall be awarded to the Plaintiff, for *two Years* true Value of the Church, (as the ſame may be letten.) And if the Six Months be not paſſed, but the Preſentment be deraign'd within the ſaid Time, then Damages ſhall be awarded to the *Haf Year's* Value of the Church; and in Caſe of Inſolvency, the Diſturber ſhall be impriſon'd for two Years, or half a Year reſpectively.

Q. What if the Biſhop hath not Collated?

A. * Tho' he hath not collated, yet if he hath *Jus Conferendi*, the Plaintiff ſhall, if he will, recover double Damages, within the Meaning of this Act: But if, notwithſtanding the Biſhop's Title to collate, the Church remains void, the Plaintiff may recover his Preſentation; and if he does, the Damages ſhall only be for half a Year; in which Caſe

Caſe he hath his Election, either to loſe his Preſentation, and hve double Damages, or to have his Preſentation with ſingle Damages.

Q. Is the Biſhop or Ordinary to be named in a *Quare Impedit*, together with the Diſturber?

A. * Yes; *if the Church be not filled*, to prevent the Lapſe; if the Church *be already fill'd* by the Biſhop, on account of Lapſe, he muſt be named in it, together with the Iucumbent, otherwiſe *the Writ will abate.*

Q. Why does the naming of the Biſhop in the Writ of *Quare Impedit*, prevent the Lapſe?

A. Becauſe he muſt either plead, that he claimeth nothing but as ordinary, *&c.* and then the Plaintiff hath an Award of a Writ to him, with a *Ceſſet Executio*; or elſe he muſt allow himſelf to be a Diſturber; and being made Party to the Action, he is barred of the Advantage of the Lapſe.

Q. Shall the naming of the Biſhop in the Writ, *in all Caſes*, prevent his having the Advantage of a Lapſe?

A. No; * If a *Quare Impedit* be brought againſt a Biſhop for a Diſturbance, and the Plaintiff doth lay in his Count, the Diſturbance to be *after* the Date of the Writ, he ſhall be barr'd, and the Biſhop may collate when the Time of Lapſe comes: So alſo in the Caſe of a *feigned Action*, as when a Patron being no ways diſturbed, but his Church remaining open to him, he preſents not; but before the Six Months incurred, or before Colla-

Collation made by the Ordinary, he brings a *Quare Impedit*; ſuch fraudulent Action ſhall not debar the Ordinary of preſenting by Lapſe, hanging the Writ.

Q. What is the Duty of the Biſhop after Judgment in the Temporal Court, and upon a Writ to command Inſtitution?

A. If the Church is *void*, he is to *inſtitute*; if the Church is already *full*, either by Preſentation of a Stranger, or by his own Collation *pendente Lite*, a Writ of *Quare non Admiſit* will go againſt him; * to which he may return, that the Church is full. * Some think it adviſeable to execute the Writ commanding Inſtitution, and leave the two Incumbents to try their Rights at Common Law.

TIT. XXXIV.

Legal Poſſeſſion of Dignity, and Benefice.

Q. HOW many Ways doth Spiritual Promotion become void, and what Notice is to be given of ſuch Voidance?

A. By the Act of God; 2. By the Act of the Incumbent; 3. By the Act of the Ordinary: 4. By the Act of the Law; to be notified reſpectively as below.

Q. How does Voidance happen by the Act of God?

A. By

A. By Death of the Incumbent, and doth commence from the Day thereof; and of this Voidance the Patron is bound to take Notice at his Peril, without expecting an Intimation from the Ordinary.

Q. How may Voidance happen by the Act of the Incumbent?

A. 1. By Reſignation, which being neceſſarily made into the Hands of the Ordinary, and not valid, but as admitted by him, the Voidance conſequent upon it, is to be notified by the Ordinary to the Patron. 2. By *Ceſſion* or the Acceptance of a ſecond Benefice incompatible?

Q. What is a Benefice incompatible?

A. That, the Acceptance whereof, without Diſpenſation or Commendam, makes a former void; and this may be either upon the Account of its Value, or by Promotion.

Q. How are Benefices void in theſe Reſpects?

A. If the firſt Benefice is of the Yearly Value of Eight Pounds or above, in the King's Books, it is void by Act of Parliament, and no Notice is needful; if *under Eight* Pounds a Year, it is void by *Canon* Law, and the Patron may either preſent his Clerk immediately, and require Admiſſion, or may ſue in Court Chriſtian for Sentence of Deprivation, and wait for the Notice to be given thereupon; or the Ordinary himſelf may, *ex mero Officio*, proceed to Deprivation, and then give Notice.

Q. How

Q. How is Voidance by Promotion?

A. When a Parſon poſſeſs'd of Eccleſiaſtical Benefices of any Kind is promoted to a Biſhoprick in *England* or *Ireland*, and there is no Diſpenſation to hold them in *Commendam* with the Biſhoprick, in ſuch Caſe, upon the *Conſecration* of the Biſhop, they become void, and the Right of Preſentation belongs to the Crown.

Q. How is Voidance by the Act of the Ordinary?

A. By Deprivation for any Crime, *&c.* which Voidance, being created by Sentence in the Eccleſiaſtical Court, muſt be notified to the Patron; but takes not Place preſently, if an Appeal is depending.

Q. How are Benefices void by the Act of the Law?

A. In Caſe of Simony; not ſubſcribing the XXXIX Articles, or Declaration; not reading the Articles, or the Common-Prayer; and Non-payment of Tenths: All which ſhall be taken Notice of in their proper Places.

Q. What is the *general* Rule concerning the Notice to be given of ſuch Voidances as happen by *Statute?*

A. * If the Diſability grow by any Act of Parliament, or other Temporal Law, there no Notice ought to be given, unleſs Notice be *preſcribed to be given* thereby.

Q. To whom does the Cognizance of Avoidance of Benefices appertain?

A. By

A. By 25 *Ed.* III. *c.* 8. it is expreſly confirmed to the *Eccleſiaſtical Judge*; but * a Diſtinction hath been found out and alledged between *full and not full*, and *void and not void*: The former of which ſhall be tried by the Certificate of the Biſhop, becauſe *Plenarty* is by *Inſtitution*, which is a ſpiritual Act; but whether *void or not void* ſhall be tried by the Country, being an Act notorious to the Country, and diſtinguiſhable by them.

Q. What Stamp is required for a Preſentation?

A. Every Preſentation, Collation, or Donation, of or above ten Pounds in the King's Books, muſt have a double forty Shilling Stamp; if under, none is required.

Q. What are the Rules of Common and Canon Law concerning Preſentation and Collation?

A. 1. A Preſentation muſt be taken from, and executed by the proper Hand or Hands. 2. The Right of *Nomination* may be in one Perſon, and the Right of *Preſentation* in another. 3. Preſentation may either be * by Word or Writing. 4. No Perſon may preſent himſelf. 5. Preſentation, tho' duly made in all Reſpects, may be *revoked*, or varied.

Q. If *Feme-Covert* hath Title to preſent, can ſhe preſent alone?

A. * No: The Preſentation muſt be by Huſband and Wife, and that in both their Names; except the Caſe of the Queen, who in this reſpect is *Feme-Sole*.

Q. Does

Q. Does the Right of Patronage in the Wife deſcend to the Heir?

A. * Yes; but the Right of preſenting during Life belongs to the Husband, who is Tenant by Courteſy.

Q. In whoſe Name muſt the Preſentation be, where one is *Guardian in Socage* to an Infant who hath Title to preſent?

A. It muſt be * in the Name of the Infant; for the Guardian cannot preſent, becauſe he is to meddle with nothing but what may be accounted for.

Q. If one hath Right to preſent at the next Avoidance, and dies, to whom ſhall the Right go?

A. * Whether the Church be full or void at the Time of his Death, the Right, not being deviſed by Will, goes to the Executor.

Q. What if one is ſeized of an Advowſon in Fee, and the Church becomes void, and he dies *before preſenting* ---?

A. The Avoidance goes to the Executor, and not to the Heir; * unleſs the Incumbent was the Perſon ſeized alſo in Fee of the Advowſon, for then the Heir ſhall preſent.

Q. If the Teſtator preſents, and dies before his Clerk is admitted, and the Executor preſents another Clerk ---?

A. The Ordinary may take which he will.

Q. If the Right of Preſentation is in Coparceners, and they agree in the ſame Perſon ---?

A. They are to join in the Act of preſenting, otherwiſe a Preſentation from the eldeſt Siſter alone is good.

Q. Is it the ſame in Joint-Tenants, or Tenants in Common, where hath been no Compoſition in Writing to preſent by Turns —?

A. No, they muſt of Neceſſity *join* in the Preſentation; for if they preſent ſingly, the Biſhop may refuſe the Clerk.

Q. How can the Right of Nomination be in one Perſon, and the Right of Preſentation in another?

A. Where he who is ſeized of the Advowſon doth grant unto another and his Heirs, *&c.* that as oft' as the Church becomes void, the Grantee and his Heirs ſhall nominate to the Grantor and his Heirs, who ſhall be bound to preſent accordingly.

Q. Is this often practiſed?

A. It is no uncommon Caſe, but is moſt frequently found in the Dioceſe of *Norwich.*

Q. What if the Nominator neglect to appoint his Clerk till Lapſe incurs, and then the Patron preſents before the Biſhop collates---?

A. The Biſhop is bound to admit his Clerk.

Q. How can Preſentation be by Word?

A. The Patron muſt declare in the Preſence of the Ordinary.

Q. Is Preſentation by Writing properly a Deed?

A. No, but in the Nature of a *Letter miſſive* to the Biſhop. * Where a Corporation aggregate Preſents, it muſt be under their Common Seal.

Q. If

Q. If a Patron cannot preſent himſelf, how may he be intitled to Inſtitution?

A. Though he cannot preſent himſelf in Form, yet he may offer himſelf to the Ordinary, and pray to be admitted, and that Admiſſion may be good; but * the more legal and regular Way, is to make over the Right to ſome other, before the Avoidance.

Q. Where the Right of preſenting is veſted in more Perſons than one, as in the Caſe of Joint-Tenants, Executors, and Grantees of the next Avoidance, may one of themſelves be preſented?

A. Yes; a Preſentation of one of theſe, made by the reſt, is good.

Q. Has every Patron a Right of *Revocation?*

A. * The general Doctrine is, that none but the King can revoke, which he may do at any Time before Induction: He may alſo preſent a ſecond Clerk, and ſuch ſecond Preſentation ſhall be a good Repeal of the firſt; and if the King dies before the Induction of his Clerk, this is ſaid to be a Revocation in Law.

Q. What is the general Conſequence of a Right to revoke in any Caſe?

A. 'Tis an Obligation upon the Biſhop not to admit againſt ſuch Revocation, upon Pain of being a Diſturber.

Q. If a common Perſon cannot *revoke*, may he not *vary* his Preſentation?

A. Yes: After one Clerk hath been preſented, he may, before Admiſſion given, preſent

ſent another; but with this Difference from a Revocation, that where a Patron doth thus vary, *cumulando*, the Ordinary may chuſe and admit which of the Clerks he pleaſes.

Q. Is there any Diſtinction between the Preſentations of Eccleſiaſtical and Lay Perſons in this Particular?

A. * The Power of varying belongs not to Eccleſiaſtical Perſons of any Kind, becauſe they are ſuppoſed to be competent Judges of the Sufficiency of the Perſon, and do therefore proceed by Judgment and Election; and whoever Elects an unfit Perſon, is *ipſo jure* deprived of the Power of Electing, and therefore * *Potior qui Prior* is the Rule of Canon Law in this Caſe.

Q. Can a Son be immediate Succeſſor to his Father in a Benefice?

A. Not Canonically, without a Diſpenſation from the Archbiſhop of *Canterbury*; of which kind of Diſpenſation there appear to have been no leſs granted than Three hundred in the Space of fifty-two Years, from the Reſtoration to the Time when Biſhop *Gibſon* wrote his *Codex*.

Q. What is Simony?

A. Simony is thus defined, by *J. de Athon*, *Simonia eſt Spiritualium vel Spiritualibus annexorum, præcedente pacto promiſſionis, conditionis modi, ſervitii, vel cujuſlibet temporalitatis, Receptio ſeu Donatio.*

Q. Why is this called *Simony*?

A. From the Analogy it bears to the Crime of *Simon Magus*, who offered Money for the Power of conferring the Holy Ghoſt upon whomſoever he ſhould lay his Hands: And though the Fact which comes neareſt to this is, the ſelling of Holy Orders, the ordaining Perſons upon the Motive or Score of Money; and tho' ordaining Perſons, and collating them to Benefices, are not only different but ſeparable; yet becauſe it is determined by the Laws of our Church, that the Office is inſeparable from the Benefice, and that there ſhould be no Miniſters *ſine titulo* allowed among us: Therefore the giving or the taking Money for a Preſentation or Collation, *&c.* (except what is appointed to be paid as Fees for Inſtruments) is with us called *Simony*, and made puniſhable as ſuch; inaſmuch that tho' it be not buying or ſelling of a ſpiritual Gift, it is nevertheleſs the buying and ſelling of that which is *annex'd to a ſpiritual Gift.*

Q. To whom does it appertain to determine Simony?

A. To the Spiritual Court.

Q. But is it not now become a Matter of Cognizance in the Temporal Courts? and does not the Statute 31 *Eliz. c.* 6. intitled, *An Act againſt Abuſes in Elections of Scholars, and Preſentation to Benefices*, alter or abrogate the Eccleſiaſtical Laws concerning it?

A. No, it only enacts ſome particular Penalties on ſome remarkable Simoniacal Acts; and is not *privative* of the Juriſdiction of the Church,

Church, or its Conſtitutions, but *accumulative*: It leaves the Church all the Authority it had before, *&c.* only, whereas till then theſe Crimes were inquirable and puniſhable by the Eccleſiaſtical Judge alone; they may *now*, in ſome Caſes ſpecified in this Statute, be brought before the *Civil Magiſtrate alſo*: Nay, ſo far are the antient Eccleſiaſtical Laws againſt Simony, and the Powers of the Spiritual Court in Execution of thoſe Laws, from being ſuſpended by this Act, that they are, in a particular Clauſe, expreſly confirmed by it.

Q. What is the Tenor of that Act?

A. 'Tis enacted, That if any Perſon or Perſons, Bodies politick or corporate, ſhall, for any Sum of Money, Reward, Gift, Benefit, or Profit, directly or indirectly, or for or by reaſon of any Promiſe, Agreement, Grant, Bond, Covenant, or other Aſſurance of, or for any Sum of Money, Reward, Gift, Profit or Benefit whatever, directly or indirectly, preſent or collate any Perſon to any Benefice, Dignity, or Living Eccleſiaſtical, or give or beſtow the ſame, for or in reſpect of any ſuch corrupt Cauſe and Conſideration, every ſuch Preſentation, Collation, Gift, *&c.* and every Admiſſion, Inſtitution, Inveſtiture, and Induction thereupon, ſhall be utterly void, fruſtrate, and of none Effect; and any Perſon, giving or taking Reward, ſhall forfeit double the true Value of one Year's Profit, and the Clerk ſhall be diſabled to accept the ſame Benefice.

Q. How many Kinds of unlawful Contracts may be included in this Statute?

A. Altho' the moſt plain and direct Simony is when the Church is become void, and the *void Turn*, * or the Procuring of it, is Contracted for; yet there may be many other kinds of unlawful Contracts within this Statute, while the Church is *full* of an Incumbent: As,

1. * If the next Preſentation is granted upon a Bond given to pay ſuch Sum of Money to the Grantor, when the *Church ſhall become void.* 2. If Money is given to one, on Condition that he *procures* a particular Perſon to be preſented, when the Church ſhall become void, and that Perſon is preſented. 3. * If the next Preſentation be purchaſed or granted, with Condition to preſent a particular Perſon by *Name.* 4. * If one promiſe to a Clerk, that, in Conſideration he will marry his Daughter, he will preſent him to a particular Living when void, or to the next Living, or the next good Living, that ſhall fall void, in his Gift, and he doth preſent him, this is a Simoniacal Contract. 5. If a Purchaſe is made of the next Avoidance, * when the Incumbent is ſick, and like to die. 6. If a Church being litigious, one Party gives Money, or other Conſideration, to the other to ſurceaſe, eſpecially if the Money is given by the Preſentee on his own Account, this ſeems to be a Simoniacal Contract, unleſs Allowance may be made for a Man *redimere Jus ſuum.*

Q. If

Q. If the Preſentee be neither Party to the Contract, nor privy to it, ſhall his Preſentation be void?

A. * Yes, and ſo it is with Regard to the Patron: A Simoniacal Contract with the Friend or Wife of the Patron, is within the Statute; * and where the Contract was between the Father of the Incumbent, and the Wife of the Patron, and it was found by ſpecial Verdict, that neither Patron nor Incumbent knew any thing of it, yet it was held to be a Simoniacal Contract within the Statute.

Q. How has this Statute been evaded?

A. The Bond and Aſſurance in the Statute being for Money, Reward, Gift, *&c.* a Way was found very early to avoid the Force, and defeat the Intention of it, with Impunity, *viz. by general Bonds of Reſignation.*

Q. Are Bonds of Reſignation, which are *conditional*, to be looked upon as Simoniacal within the Statute?

A. * They have been declared Simoniacal, if a direct Profit or Reward be *expreſſed* as the Condition of the Bond; for Inſtance, the making ſuch a Leaſe, the granting ſuch a Portion of Tithes, the giving Leave to incloſe, Articles which it is not likely any Simoniacal Patron will *expreſs* in his Bond: Yet there are *other* Conditions which have been declared good and allowable; for Inſtance, the taking a ſecond Benefice, the being Non-reſident for ſo many Days or Months, and the Arrival of a Son at the Canonical Age of Inſtitution.

Q. What is to be ſaid of ſuch Bonds of Reſignation as are *abſolute* and *indefinite*, where the Clerk obliges himſelf to reſign, upon *three Months Notice*, or *upon the Requeſt of the Patron*, or the like?

A. Tho' this is a viſible Inlet to the worſt Simony that a corrupt Patron can be guilty of, yet ſuch Bonds have often * been declared good in Law; for this Reaſon, namely, that becauſe there was no Averment that they were for Simoniacal Purpoſes, they *might be* upon ſuch Reaſons, and for ſuch Ends, as the Temporal Courts allow.

Q. Does this ſeem to be a ſufficient Reaſon?

A. Since there are certain Conditions that they do allow, as in the Caſe of a Minor, and ſuch Reſtraints as go no farther than to oblige the Clerk to do his Duty, the Preſumption ſeems very ſtrong, that the Condition would *have been expreſſed*, if it had been ſuch as the Law warrants; and that nothing could have induced the Patron to couch it in general Terms, but that it was ſuch a Condition as was not *fit to be particularly expreſſed.*

Q. What, in ſhort, then is to be thought of ſuch Bonds?

A. They are an unſpeakable Miſchief to Religion, and bring a great deal of Scandal and Reproach upon the Church: And tho' * it has been ſaid, that if the Patron ſhall offer to take the Benefit of ſuch general Clauſe for indirect and illegal Purpoſes, the Clerk may be re-

relieved in Chancery; yet if Clergymen will ſo far forget the Dignity of their Function, and their Duty to their Biſhop, and the Oath they are to take, as to ſubmit to ſuch trafficking Methods, and to reduce themſelves to ſuch a ſlaviſh State, it muſt be owned, that as to themſelves, they deſerve neither Compaſſion nor Relief.

Q. Are *Donatives* properly within this Statute?

A. * Yes, corrupt Donation being an equal Miſchief with corrupt Preſentation or Collation.

Q. What does the Statute mean, when it ſays the Benefice ſhall be *utterly void?*

A. That it ſhall be ſo void, as that there ſhall be * no Need of Deprivation, or Sentence declaratory in the Spiritual Court, ſo as the Pariſhioners may * deny their Tithes.

Q. In whom is the Right of Preſentation upon Avoidance by Simony?

A. * In the Crown, for that Turn; and that, notwithſtanding the Death of the Simoniacal Incumbent, while the Church remains void, * and no other is in Poſſeſſion at the Preſentation of the true Patron.

Q. * But if any Perſon hath at firſt preſented Simoniacally by Uſurpation ---?

A. The rightful Patron ſhall preſent.

Q. Is a Clerk that *ſeeketh* to obtain a Preſentation by Money, altho' afterwards the Patron preſent him *gratis*, diſabled to take that Benefice?

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A. The Words of the Statute are againſt corrupt *ſeeking*, as well as *accepting*; and * it hath been ſaid, that a Simoniacal *Attempt only* doth diſable.

Q. What is the *Eccleſiaſtical* Penalty upon Simony?

A. Many of the antient Canons of the Church make Depoſition the Puniſhment of Simony, whether in Biſhops or Presbyters: Others make it Deprivation.

Q. What Difference does the Civil and Canon Law make in Point of Penalty between *Simoniacus* and *Simoniace Promotus*?

A. If the Clerk is *Simoniacus*, Privy or Party to the Simony, he is to be deprived of that, and for ever diſabled to accept any other Benefice: but if he is only *Simoniace promotus*, (by Simony between two Strangers, whereunto he was not privy) he is *deprivable*, by reaſon of the Corruption, * but not *diſabled* to take any other.

Q. What Care does the Church of *England* take to prevent Simony?

A. By requiring this Oath of every Clerk before Inſtitution. *I do ſwear, That I have made no Simoniacal Payment, Contract, or Promiſe, directly or indirectly, by myſelf, or by any other, to my Knowledge, or with my Conſent, to any Perſon or Perſons whatſoever, for or concerning the procuring or obtaining of* —— N--- N---; *nor will, at any Time hereafter, perform or ſatisfy any ſuch kind of Payment, Contract, or Promiſe, made by any other without my Knowledge or Conſent.*

Q. What

Q. What do you obſerve from this Oath?

A. According to the plain Tenor of it, as well as according to the Language of former Oaths, and the Notion of the Catholick Church concerning Simony, it is againſt *all Promiſes whatſoever:* And therefore, though a Perſon comes not within the Statute 31 *Eliz.* by promiſing Money, Reward, Gift, Profit, or Benefit; yet he becomes guilty of Perjury, if he takes this Oath *after any Promiſe of what kind ſoever.*

Q. Does the Simony of a Predeceſſor, being dead, affect his innocent Succeſſor, ſo as that he may be troubled, or removed, upon Pretence of Lapſe?

A. No, unleſs the Simoniack, or Simoniacally preſented Perſon, or his Patron, was convicted in the Life-time of the ſaid Simoniack. 1 *Will. & Mar. c.* 16.

Q. Are Leaſes made by Simoniacks good?

A. Yes, if really *& bona fide* made, and in caſe the Leſſee was not privy to the Simony. *Ib.*

Q. What is Inſtitution?

A. The actual Conveyance of the Spiritual Cure by the Biſhop to the Clerk, upon the Preſentation of another.

Q. Can the Archbiſhop give Inſtitution to a Peculiar?

A. * If he gives Inſtitution to a Peculiar belonging to an *Eccleſiaſtical* Perſon or Body, it is only *voidable*; becauſe they being not free from his Juriſdiction and Viſitation, the Archbiſhop ſhall be ſuppoſed to have a concurrent

current Juriſdiction, and in this Caſe only to ſupply the Defects of the Inferiors, till the Contrary appears: But if the Archbiſhop grant Inſtitution to a Peculiar in a *Lay-Hand*, it is null and void; becauſe he can have *no Juriſdiction* there.

Q. To whom belongs the Right of Inſtitution, while any Dioceſe, or inferior Juriſdiction, is Viſited and Inhibited by the Archbiſhop; or during the Vacancy?

A. During Inhibition, to the Archbiſhop: And in the Vacancy, to him, or other Perſon, who by Compoſition, Preſcription, *&c.* is Guardian of the Spiritualties.

Q. Is the Power of Inſtitution *Local?*

A. The Courts of Common Law are ſaid to affirm, that it is not, but follows the Perſon of the Ordinary where-ever he goes: But this hath not always been underſtood to be *clear* Law, as appears by the many Commiſſions granted by Archbiſhops to their Comprovincial Biſhops, to inſtitute out of their Dioceſe, and in any Part of the Province.

Q. Can Inſtitution be given by Commiſſion from him in whom the Power reſts?

A. Yes, in *particular* Caſes; and the *general* Power may likewiſe be Delegated by Patent to Chancellors or Commiſſaries; but this hath formerly been judged not convenient, as appears from the following Order in the Canons of 1640, *In all Patents of Chancellors, Commiſſaries, and Officials, the Biſhop ſhall keep in his own Hands the Power of Inſtitution unto Benefices.*

Q. Can

Q. Can a *Layman* be admitted to a *Benefice?*

A. * It hath been held, that, in former Time, a *meer Layman* might have taken a Title to a Deanry, Prebend, or other Benefice *without Cure*; but by the Act of Uniformity, 13, 14 *Car.* II. *c.* 4. Prieſthood is made *a neceſſary Condition* of being admitted to any *Eccleſiaſtical Promotion* whatever.

Q. What is required of a Perſon who applies for Inſtitution?

A. He muſt ſhew the Biſhop his Letters of Orders, and bring a ſufficient Teſtimony of his former good Life and Converſation, if the Biſhop require it; and laſtly, ſhall appear *upon due Examination* to be worthy of his Miniſtry. *Can.* 39.

Q. For what Cauſes may a Clerk be refuſed Inſtitution?

A. By 9 *Edw.* II. *c.* 13. For lack of Learning, or for other Cauſe reaſonable.

Q. Who is to be Judge of the Clerk's Inſufficiency?

A. By the ſame Statute the *Biſhop* hath a Right to Examine and Judge; nor is he accountable to any † *Temporal Court* for the Meaſures he takes, or the Rules by which he proceeds, in Examining and Judging; nor need he ſet forth in what kinds of Learning, or to what Degrees he is defective: * It has been *adjudged in Parliament*, a good Plea, on the Part of the Biſhop, that the Preſentee was *perſona*

† But *Note*, he may Appeal to the immediate Superior, as above, pag. 275. and have a *Duplex Querela*.

in

in Literatura minus ſufficiens, ſeu capax ad habendum dictam Eccleſiam.

Q. Does not the Clerk's having been Ordained and Licenſed to preach by another Biſhop, and ſo preſum'd to be of good Abilities, diminiſh the Right which that Statute gives the preſent Biſhop to Examine and Judge?

A. No, as has been particularly allowed, not only by the Court of *Common Pleas*, and *King's Bench*, but alſo by the High Court of Parliament.

Q. Is lack of Language a good Cauſe of Refuſal; namely, of *Welch* or *Engliſh* in the reſpective Cures?

A. * Yes, as rendring the Clerk uncapable of the Cure.

Q. What other reaſonable Cauſe is underſtood?

A. 1. * All ſuch Cauſes as are ſufficient Cauſes to *deprive* an *Incumbent*, are ſufficient Cauſes to *refuſe a Preſentee*. 2. If a Man be guilty of Crimes which are *mala in ſe*, as Incontinence, Drunkenneſs, Murder, Manſlaughter, Hereſy, Schiſm, Perjury, Simony, he may be legally refuſed; but if Crimes are alledged that are only *Mala prohibita*, as haunting of Taverns, Gaming, *&c.* the Refuſal cannot be warranted: So the Books of the Common Law hold. And theſe Rules are well calculated for the Benefit of Patrons and Purchaſers, to facilitate their obtruding of Sons or Relations upon the Church for Support and Maintenance; but it is a melancholy Conſideration, with regard to *Religion*,

that the Biſhop, who hath the Care of all the Souls in his Dioceſe, and is *bound in Conſcience* to ſee them well taken Care of, ſhall be *bound in Law* to commit that Care to ſuch Perſons who are known to live like *Laymen*, in Contempt of the wholeſome Orders of the Church, for the grave and decent Behaviour of the *Clergy*; and this meerly becauſe they are not quite *wicked* and *irregular* enough to be *deprived* in a legal Way.

Q. Are there no other Cauſes of Refuſal?

A. Yes, ſuch as are not * properly Crimes but Incapacities; as the being a Baſtard, without Diſpenſation; or Excommunicate, or Outlaw'd: And, * as my Lord *Coke* held, an Alien; tho' the Contrary was holden by *Rolle*, 2 *Abr.* 348.

Q. Is the Biſhop bound, in a *Quare Impedit* brought againſt him for Refuſal of the Clerk, to ſet forth the Cauſe of his Refuſal ſpecially and directly?

A. Yes, except in Caſe of Refuſal for Inſufficiency for Learning, as above: For, that the Clerk is of ill Life and Converſation, or a Schiſmatick in general, is not ſufficient, without ſhewing * what Crimes, or what Schiſmatical Acts, or Heretical Opinions, he is charged with. The Temporal Court then will judge whether the Cauſe be juſt or not: And, if the Party denies the ſame, the Court may write to the Metropolitan to examine the Matter, and certify it: For, whether the Cauſe be Temporal or Spiritual, the Examination of the Biſhop doth not finally *conclude* the Clerk; the Biſhop is Judge of the Ability, but not the *ultimate* Judge. *Q.* Can

Q. Can the Biſhop, having once refuſed a Clerk for Inſufficiency, accept of him afterwards?

A. * Not if a new Clerk is preſented.

Q. What further is required at Inſtitution?

A. Subſcription, and Oaths.

Q. What Subſcription is required?

A. To the XXXIX Articles, and the three Articles in the thirty-ſixth Canon, and to the Declaration of Conformity to the Liturgy of the Church of *England*.

Q. What Oaths muſt be taken at Inſtitution?

A. The Oaths of Supremacy and Allegiance. The Oath againſt Simony, as above. The Oath of Canonical Obedience: *Ego* A. B. *juro quod præſtabo veram & Canonicam Obedientiam Epiſcopo D. ejuſque Succeſſoribus in omnibus licitis & honeſtis; ſic me Deus adjuvet.* The Oath of Reſidence upon a Vicarage: *Ego* A. B. *juro quod ero Reſidens in Vicaria mea, niſi aliter diſpenſatum fuerit a Diœceſano meo.*

Q. What Penalty is there for taking Money for Inſtitution, other than lawful Fees?

A. The Perſon offending ſhall forfeit the double Value of one Year's Profit, and the Living ſhall be void. 31 *Eliz. c.* 6.

Q. What are the lawful Fees for Inſtitution?

A. The Fees Eccleſiaſtical of every kind are ſet down in a Table, confirmed by Archbiſhop *Whitgift*, according to the Uſe and

Cuſtom of every Dioceſe; which Table is, or ought to be, ſet up in every Eccleſiaſtical Court and Regiſtry, according to the 36th *Canon*.

Q. What Stamp is neceſſary for an Inſtitution?

A. A treble five Shillings.

Q. What is the Difference between *Collation* and *Inſtitution*?

A. Collation is when the Biſhop does, in his own Right, Inſtitution, when at the Preſentation of another, convey the Cure of Souls to the Incumbent: And therefore they have the ſame Effect with regard to *Spiritual* Rights.

Q. Have they not the ſame Effects with regard to *Temporal Rights*?

A. Partly the ſame, and partly different. Preſentation gives *Jus ad Rem*, Inſtitution *Jus in Re*: Accordingly in Virtue of *Collation*, as well as *Inſtitution*, which equally convey *Jus in Re*, the Clerk may enter into the Glebe, and take the Tithes; tho', for want of Induction, he cannot *grant* or *ſue* for them. * But herein they differ in their Temporal Effects: By *Inſtitution* the Church is full, and Plenarty by ſix Months is pleadable againſt all Perſons but the King; and againſt the King alſo, claiming in Right of a common Perſon: But by *Collation* the Church is not full, nor is Plenarty by Collation pleadable; but the right Patron may bring his Writ, and remove the Collatee at any Time, unleſs he be ſuch Patron who hath alſo a Right to collate, for againſt him Plenarty by Collation is pleadable.

Q. What

Q. What is the Reaſon why Collation doth not make a Plenarty?

A. * Becauſe the Biſhop would be Judge in his own Caſe, to the great Prejudice of Patrons; and therefore the Biſhop's Collation, in this reſpect, is interpreted no more than a *Temporary Proviſion* for Celebration of Divine Service, till the Patron do preſent.

Q. What is a Super-inſtitution?

A. When a Church being full by Inſtitution, a ſecond Inſtitution is granted to the ſame Church.

Q. What is the Advantage of a Super-inſtitution?

A. * It enables the Party who obtains it, to try his Title by Ejectment, without putting him about to his *Quare Impedit.*

Q. Is this Method often practiſed?

A. Many Inconveniencies following from hence, as the Uncertainty to whom Tithes ſhould be paid, and the like, it has been deſervedly diſcouraged.

Q. Where is a Super-inſtitution, as ſuch, properly to be tried?

A. In the Spiritual Court, but not if Induction hath been given upon the firſt Inſtitution.

Q. What Care is taken to preſerve the Entries of Inſtitution?

A. Inſtitution being given to a Clerk, a diſtinct and particular Entry thereof is to be made in the publick Regiſter of the Ordinary.

Q. By whom is that Entry to be made?

A. 'Tis

A. 'Tis the proper Buſineſs of the Regiſter, who receives a Fee for doing it, and is puniſhable by his Ordinary for neglecting it: And if Patrons ſuſpect that the Regiſter of the Biſhop will be negligent in keeping of them, * they may have a *Certiorari* to the Biſhop, to certify them into Chancery.

Q. In what Manner muſt the Entry be made?

A. Not only that ſuch a Clerk received Inſtitution ſuch a Day, and in ſuch a Year, but if the Clerk was *preſented*, at whoſe Preſentation; and whether it was in his own Right, or the Right of another; and if *collated* or preſented by the Crown, whether *pleno jure*, or *per lapſum temporis*.

Q. Of what Standing and Uſe is this Practice?

A. It has been the Practice as far back as any Eccleſiaſtical Records remain, and is of great Importance, both to the Clerk and Patron: To the Clerk, whoſe Letters of Inſtitution may be conſumed or loſt; and to the Patron, whoſe Title may ſuffer in Time to come by the Want of proper Evidence, upon whoſe Preſentation it was that Inſtitution was given.

Q. When is the Clerk compleat Incumbent?

A. Not till Induction, or, as the Canon Law calls it, Corporal Poſſeſſion; * for by this he is ſeized of the Temporalties of the Church, ſo as to have Power to grant them, or ſue for

them; by this, he is unexceptionably intitled to plead, that he is *Parſon imparſone*, as Occaſion ſhall require. And what Induction worketh in Parochial Cures, is effected by Inſtalment into Dignities, Prebends, *&c.* in Cathedral and Collegiate Churches.

Q. Is Induction an Act of a Temporal, or a Spiritual Nature?

A. The Books of Common Law every where declare it to be an Act of a Temporal Nature, becauſe it inſtates the Incumbent in full Poſſeſſion of the Temporalties, as theſe are oppoſed to the Spiritual Office or Function.

Q. What other Poſitions do they advance upon this Doctrine?

A. * That it is cogniſable only in the Temporal Courts; that Inſtitution itſelf is not Cogniſable in the Spiritual Courts after Induction; and that a Grantee of one of the King's Free Chapels, may be put in Poſſeſſion by the Sheriff; that * the Arch-deacon, if he refuſes or delays to induct, is not only puniſhable by Spiritual Cenſures, but is alſo liable to an Action of the Caſe in the Temporal Court.

Q. How is Induction effected?

A. After Inſtitution given, the Ordinary iſſues a Mandate for Induction to the Perſon who hath Power to induct.

Q. Who is this Perſon?

A. The Archdeacon, *jure communi*: But if a Church is exempt from Archidiaconal Juriſdiction,

diction, as many Churches are, then the Mandate is directed to the Chancellor or Commiſſary; and if it be a Peculiar, then to the Dean or Judge within ſuch Peculiar.

Q. To whom is the Mandate directed, when the Archbiſhop collates *jure devoluto*, or *ſede vacante*?

A. Not to the Officer of the Archbiſhop, but of the Biſhop.

Q. Does the Archdeacon, or other Perſon to whom the Mandate is directed, induct in his proper Perſon?

A. He may, if he thinks fit; if he does not, he iſſues a Precept to others to do it, and this Precept is directed *Univerſis & Singulis Rectoribus, Vicariis, Clericis, & Literatis infra Archidiaconatum, &c. ubicunque conſtitutis.*

Q. What if the Biſhop dies, or is removed after Inſtitution given, and while a Mandate of Induction is either not iſſued or not executed --- ?

A. The Clerk may repair to the Archbiſhop for a Mandate of Induction, becauſe the Authority of the Perſon is determined, and that Authority devolv'd to the Archbiſhop as Guardian of the Spiritualties *ſede vacante*; and the ſame Rule takes place if the Biſhop is viſited, and his Juriſdiction ſuperſeded.

Q. How is Induction to be given?

A. According to the Tenor and Language of the Mandate. The Inductor taking the Clerk by the Hand, and laying it upon the Key, or upon the Ring of the Church-Door;

or if the Key cannot be had, and there is no Ring in the Door, on any Part of the Wall of Church or Church-yard; uſes theſe Words, or to the ſame Effect: "By Virtue of this Mandate, I do induct Thee into the real, actual, and corporal Poſſeſſion of the Church of ------, with all its Rights, Profits, and Appurtenances thereunto belonging." After which the Inductor opens the Door, and puts the Perſon inducted into the Church; who uſually tolls a Bell, to make his Induction notorious to the Pariſh: Which done, the Inductor certifies the Induction ſo given on the Backſide of the Mandate, *Virtute hujus Mandati ---- die menſis ---- Induxi* N. N. *in realem, &c.*

Q. What further Qualifications are neceſſary after Inſtitution and Induction?

A. By 13, 14 *Car.* II. *c.* 4. Every Incumbent who ſhall be preſented, or collated, or put into any Eccleſiaſtical Benefice or Promotion, ſhall in the Church, Chapel, or Place of Publick Worſhip belonging to his ſaid Benefice or Promotion, within two Months next after that he ſhall be in the actual Poſſeſſion of the ſaid Benefice or Promotion, upon ſome Lord's-Day, openly, publickly, and ſolemnly, read the Morning and Evening Prayers appointed to be read by and according to the Book of Common-Prayer, at the Times thereby appointed; and after ſuch reading thereof, ſhall openly and publickly, before the Congregation there aſſembled, make the following De-

Declaration: *I* A. B. *do here declare my unfeigned Aſſent and Conſent to all and every thing contained and preſcribed in and by the Book intitled,* The Book of Common-Prayer, and Adminiſtration of the Sacraments, and other Rites and Ceremonies of the Church, according to the Uſe of the Church of *England*; together with the Pſalter or Pſalms of *David*, pointed as they are to be ſung or ſaid in Churches; and the Form or Manner of making, ordaining, and conſecrating of Biſhops, Prieſts, and Deacons: *And this, upon Pain of Deprivation* ipſo facto.

Q. Is there no Allowance in caſe of lawful Impediment?

A. The Impediment being allowed and approved by the Ordinary, the Incumbent muſt do it within *one Month* after ſuch Impediment removed.

Q. What elſe is required?

A. He is alſo to read within three Months, upon Pain of Deprivation *ipſo facto*, the Biſhop's Certificate of his having ſubſcribed the Declaration of Conformity; and alſo (as more ſafe, and has been thought more agreeable to the Tenor of the Act) he is to make the ſame Declaration again in Form before the Congregation, and that *in Time of Divine Service*, before the Service is quite ended. *Ibid.*

And by 13 *Eliz. c.* 12. Every Perſon, admitted to any Benefice with Cure, ſhall, within two Months, computing twenty-eight Days to a Month, read in the Time of Divine Service the

XXXIX Articles, and declare his unfeigned Aſſent thereunto, upon Pain of Deprivation *ipſo facto*, immediately upon Default.

Q. Is it neceſſary to have Witneſſes of the Incumbent's having done theſe Things?

A. In a Suit for Tithes, or the like, tho' the Pariſhioners may plead that the Parſon did not read the XXXIX Articles, yet the Law preſumes the Affirmative, and in that Caſe the Negative muſt be proved: However, it may do well, in a prudential Way, for every Incumbent to lay up proper Proofs of ſuch Things, as are not otherwiſe to be proved by authentick Regiſters, *viz.* His Reading of Common-Prayer, and Articles, and what concerns the Declaration, as the Law requires.

Q. Is the Deprivation, which is incurred by the Omiſſion of any of theſe Things, to be notified by the Ordinary to the Patron?

A. Yes, otherwiſe no Lapſe ſhall accrue; and he ought particularly to inform the Patron, that the Preſentee had not read the Articles, *&c.* for which Default he is deprived, and that thereupon it belongeth to the Patron to preſent.

Q. Is there any thing further to be done by the Incumbent?

A. He muſt take and ſubſcribe the Oath of Abjuration, the next Term, in any of the Courts of *Weſtminſter*-Hall, or at the next Quarter-Seſſions after Admiſſion, upon Pain of being diſabled *ipſo facto* from enjoying ſuch Benefice, and of the forfeiting five hundred

Pounds, (together with divers Incapacities) for continuing to act after Neglect or Refuſal. *Vide* the Oath of Abjuration, *pag.* 180.

Q. How is Poſſeſſion of *Sine-Cures* attained?

A. By the ſame Methods, if they are not *Exempt*, that other Rectories and Vicarages are, *viz.* By Preſentation, Inſtitution, and Induction.

Q. What are *Donatives?*

A. Donatives are ſo called, becauſe they are given and fully poſſeſſed by the ſingle *Donation* of the Patron, in Writing; without Preſentation, Inſtitution, or Induction.

Q. Whence did this Right in the Donor ſpring?

A. From the Conſent of the Biſhop to ſome particular Lords and great Men, who were deſirous to erect Places of Worſhip, for the Conveniencies of their Families, and did obtain thoſe Privileges for them, and their Heirs, in regard that the Places at firſt were conſidered only as *private Domeſtick Chapels.*

Q. Are there not other Ways of coming to the Poſſeſſion of Benefices and Dignities, which in ſome Reſpects *reſemble* Donation?

A. Yes. As, 1. The Collation of a Biſhop, without Preſentation. 2. The King's Grants of Prebends, (as of *Windſor* and *Weſtminſter*) without Inſtitution. 3. The Nominations to Perpetual Curacies, without either Preſentation, Inſtitution, or Induction.

Q. Wherein do theſe differ from Donatives properly ſo called?

A. Collations and Royal Grants, in that they are followed by Induction and Inſtallment; and Nominations to Curacies, in that the Perſons nominated are to be authorized by the Licence of the Biſhop, before they can legally officiate: Whereas Poſſeſſion by Donation is not ſubject to any of theſe, but is effected by the ſole and ſingle Act of the Donor.

Q. Does the *Grant* of a *Donative*, being once made, create a Right as full and laſting as Inſtitution and Induction?

A. Yes: Nor can it be taken away, but by the *Reſignation* or *Deprivation* of the Donee; the firſt to be made *to*, the ſecond *by* the Donor, both the Church and Clerk being exempt from *Ordinary* Juriſdiction.

Q. What was originally the Caſe of *Perpetual Curacies?*

A. They were ſuch Churches, the intire Revenue of which was united and annexed *Menſis Monachorum:* And not like other Appropriations, under the Tie of having *perpetual Vicars* appointed in them; but left to be ſerved by temporary Curates belonging to their own Houſes, and ſent out as Occaſion requir'd. But when ſuch Appropriations, together with the Charge of providing for the Cure, were tranſferred from ſpiritual Societies to ſingle Lay-Perſons, who were not capable of ſerving them by themſelves, and who, by Conſequence, were obliged to nominate ſome particular Perſon to the Ordinary for his Licence to ſerve the Cure; the Curates by this Means became ſo far perpetual,

petual, as not to be wholly at the Pleaſure of the Appropiator; nor removeable, but by the due Revocation of the Licence of the Ordinary.

Q. If the Patron of a Donative or Curacy perpetual do not nominate a Clerk, will it lapſe to the Biſhop?

A. No; but the Biſhop may compel him to do it by *ſpiritual* Cenſures: And in perpetual Curacies, he may likewiſe ſequeſter the Profits, and appoint another to take care of the Cure, till the Patron ſhall nominate a fit and proper Clerk; whether he can do ſo in Donatives is doubted, the Place being exempt from his Juriſdiction. But by 1 *Geo. c.* 10. *Sect.* 6. If Cures augmented by the Governors of Queen *Anne*'s Bounty ſhall remain void for ſix Months, without any Nomination of a Perſon to ſerve the ſame, they ſhall lapſe to the Biſhop, *&c.* according to the Courſe of Law in Caſes of preſentative Livings; and, *Sect.* 14. all *augmented Donatives* ſhall be ſubject to the Viſitation and Juriſdiction of the Biſhop of the Dioceſe, provided that no Donative ſhall be augmented without the Conſent of the Patron firſt had in Writing.

Q. If the Patron of a Donative doth *Preſent* to the Ordinary, and ſuffer Admiſſion and Inſtitution thereupon ---?

A. * It is no longer a Donative, but for ever Preſentative, and liable to Lapſe; and ſubject to the Juriſdiction of the Ordinary, provided that ſuch Preſentation be made by the *true Patron.*

Q. What

Q. What Qualifications are required in Clerks, on whom Donatives and perpetual Curacies are beſtowed, in order to preſerve and maintain their Poſſeſſion?

A. 1. They muſt be Prieſts. 2. They are to ſubſcribe the XXXIX Articles, if the Donative be, as all perpetual Curacies are, *with Cure*, and that before the Ordinary. 3. To ſubſcribe the Declaration, before the Ordinary; and if it be a Cure, to take a Certificate of ſuch Subſcription. 4. To take the Oaths of *Allegiance* and *Supremacy*: In *Donatives*, before the *Donor*; in *perpetual Curacies*, before the Ordinary. 5. To read the Common-Prayer, and give Aſſent. 6. To read and aſſent to the XXXIX Articles, if it be a Place with Cure. 7. To read the Certificate, and make Declaration. 8. To take the Oath of Abjuration. And all theſe in the ſame manner as directed upon Inſtitution and Induction.

Q. What Penalty is there upon corrupt *Reſignation* of Benefices?

A. If any Incumbent of any Benefice with Cure of Souls ſhall corruptly exchange or reſign the ſame, or directly or indirectly take any Penſion, Sum of Money, or Benefit whatever for the ſame, both the Giver and the Taker ſhall loſe double the Value of the Sum given; one Half to the King, the other to the Informer: 31 *Eliz. c.* 6.

Q. Are all indirect Bargains, not only for Money, but other Conſiderations, excluded in Reſignation?

A. The

A. The Words of Reſignation have always been *purè, ſpontè, abſolutè, & ſimpliciter:* And therefore no Condition is to be expreſſed in it, unleſs when the Reſignation is made *Cauſa Permutationis*; only *there* it admits of this Condition, *if the Exchange ſhall take full Effect, and not otherwiſe.* So that after two Perſons have procured Licence from the Ordinary, to treat of an Exchange, (of which Sort we meet with many upon our Books) and have treated, and agreed, and ſignified their Agreement, by Inſtrument in Writing, to the Ordinary, and then Reſign, and are croſs-preſented by the Patrons, and one is both Inſtituted and Inducted, and the other is only Inſtituted, and dies, or refuſes to finiſh; in this Caſe, though they have proceeded ſo far, the Reſignation, and all that followed upon it, ſhall be void; and both, (if both are living) may return to their former Benefices, upon the foot of former Poſſeſſion: or if one dies before he is Inducted, and after the Induction of the other, this Induction, and all that went before, ſhall be void, becauſe the Exchange was not *fully executed* during the Lives of the Parties.

Q. To whom muſt Reſignation be made?

A. To the Perſon who hath *Power* to *admit* it; and that is, in general, to the Perſon who granted Admiſſion to the Benefice reſigned. * It can only be made to a *Superior*, therefore a Biſhop cannot reſign to a Dean and Chapter; but it muſt be to the Metropolitan, from whom he received Confirmation and Conſecration:

tion: And it must be made in *Person*, and not by *Proxy*.

Q. What is the common Way of resigning in Practice?

A. Either by personal Appearance before the Ordinary, or elsewhere before a Publick-Notary, by an Instrument immediately directed to the Ordinary, and attested by the Notary, in order to be presented to the Ordinary, by such proper Hand as may pray his Acceptance.

Q. Is a Resignation valid, if it be not accepted by the proper Ordinary?

A. No: That is, no Person appointed to a Cure of Souls, can quit that Cure, or discharge himself of it, but upon good Motives, to be approved by the Superior, who committed it to him: (for it *may* be, he would quit it for Money, or to live idly, or the like.) And this is the Law, as well of the *State*, as of the *Church*; * as appears by that plain Resolution, That all Presentations made to Benefices resigned, before such Acceptance, are void: And there is no Pretence to say, that the Ordinary is *obliged* to accept; since the Law, which makes him Judge of the *Fitness* or *Unfitness* of accepting, hath appointed no known Remedy if he will not *Accept*; any more, than if he will not *Ordain*.

Q. Is there no Distinction in this Case between Cure of Souls, and a Sine-Cure?

A. Lyndwood makes this Distinction: *Circa præmissa tamen puto distinguendum, inter eum qui*

qui reſignat Beneficium ſimplex, *tale viz. quod non habet* Curam animarum, *& eum qui reſignat Beneficium* Curatum; *ut videlicet in primo caſu cum ejus ſolius interſit, ſtatim* in ejus præjudicium *teneat Reſignatio, etiam* abſque conſenſu Superioris; *ſecus tamen ubi imminet* Cura Animarum, *quia jam non ſolum ejus intereſt, ſed etiam aliorum quibus tenetur prædicare; unde in hoc caſu neceſſaria eſt Ratihabitio Epiſcopi, vel ipſius qui poteſt de Jure vel Conſuetudine talem Reſignationem* admittere.

Q. Is the Ordinary obliged to give the Patron Notice of his Acceptance of the Reſignation?

A. Yes, nor ſhall Lapſe incur but from the Time of Notice given; inſomuch, that if the Biſhop, who accepted the Reſignation, dies before Notice given, the ſix Months ſhall not *commence* till Notice is given, by the Guardian of the Spiritualties, or by the ſucceeding Biſhop, with whom the Act of Reſignation is *preſumed* to remain.

TIT. XXXV.

First-Fruits, *and* Tenths.

Q. WHAT is required of the Incumbent with reſpect to Firſt-fruits?

A. Every Perſon, *before* actual or real Poſſeſſion, or medling with the Profits of his Dignity, Benefice, or Promotion ſpiritual, is to

pay,

pay, or to agree and compound for his first Fruits, according to the Valuation of his Benefice in the King's Books.

Q. To whom are First-fruits and Tenths payable?

A. Before the 26 *Hen.* VIII. they were paid to the Pope; but by a Statute in that Year, to the King: The Repeal of this Statute by Queen *Mary*, was repealed by 1 *Eliz. c.* 4. whereby the First-fruits, *&c.* were restored to the Crown; and so continued, till by 2, 3 *Ann. cap.* 11. it was enacted, That the Queen might by Letters Patents incorporate such Persons as she should appoint, to have a common Seal, and perpetual Succession; and settle upon the said Corporation the First-fruits and Tenths of all Benefices spiritual, for the Augmentation of the Maintenance of Ministers of the Church of *England*, officiating in any Church or Chapel of *England*, *Wales*, or *Berwick upon Tweed*, not sufficiently provided for.

Q. How is Composition to be made for First-Fruits?

A. One Bond only is to be taken for the Payment of them, at four several half yearly Payments, at certain Days, upon the last Payment the Bond is given up. 2, 3 *Ann. c.* 11.

Q. What if the Incumbent does not enjoy the Benefice two Years?

A. If he die, or be legally outed, before the end of a Year from the Advoidance, having continued half a Year, he, his Executors, Administrators, and Sureties, shall only

pay

pay a *fourth* Part of the Firſt-Fruits; if he continue a Year, half; if a Year and half, three Parts; if two Years, the whole. 1 *El. c.* 4.

Q. What Eaſe and Relief have the Archbiſhops and Biſhops in the Payment of Firſt-Fruits?

A. * They have four Years allowed for Payment, a fourth Part every Year; and in Caſe of Death or Tranſlation before the End of that Term, proportionable Abatement ſhall be made.

Q. Are the *Tenths* to be paid the firſt Year, as well as the Firſt-Fruits?

A. The Tenths for that Year are to be deducted and paid by themſelves. 27 *H.* VIII. *c.* 66.

Q. At what Time are the Tenths due?

A. Yearly at *Chriſtmas*; but Allowance is given to the Clergy, ſo that if they pay at any Time before the laſt of *April*, they are ſafe. 3 *Geo.* I. *c.* 10. *Sect.* 2.

Q. What Penalty is there for not paying Tenths?

A. Any Incumbent not paying Tenths forty Days after Demand, after ſuch Default thereof certified into the Exchequer, ſhall be *ipſo facto* deprived of all his Promotions. 26 *H.* VIII. *c.* 3.

Q. Do Succeſſors ſtand chargeable with Arrears of Tenths due from their Predeceſſors?

A. Yes; but there is a Clauſe of Remedy by Diſtreſs, *&c. i. e.* he may diſtrain the Goods of his Predeceſſor, as ſhall be upon the Dignity, Benefice or Promotion, and retain them

them till Satisfaction, and if the Tenths be not paid in twelve Days, he may ſell them, and in Default of Diſtreſs, he may proceed againſt the Predeceſſor, or his Executor, by Bill in Chancery, or Action of Debt. 27 *Hen.* VIII. *c.* 8.

Q. When does the Year for which the First-Fruits are to be paid, commence?

A. * From the Avoidance or Vacation of the Benefice: In Biſhopricks from the Reſtitution of the Temporalties.

Q. What Eccleſiaſtical Benefices are diſcharged from Payment of Firſt-Fruits and Tenths, by 5 *Ann. c.* 24?

A. All ſuch as exceed not 50 *l.* clear yearly Value; unleſs where the Tenths of any Benefice were granted to any Perſon in Perpetuity, before the third Day of *Novemb.* in the third Year of her Reign.

Q. How was this Valuation to be made?

A. The Biſhops of every Dioceſe, Guardians of the Spiritualties *ſede Vacante*, and Ordinaries of Peculiars, were by the Oaths of two or more credible Witneſſes, and by other lawful Ways, impowered to inform themſelves of the improved yearly Value of every Benefice with Cure of Souls within their reſpective Juriſdiction, the clear yearly Value whereof did not exceed fifty Pounds, and to certify the ſame into the *Exchequer*; which Certificate filed there, ſhould aſcertain the yearly Value of the Benefice to be diſcharged.

Q. What Penalty is there upon Neglect of Compounding for the Firſt-Fruits?

A. Any

A. Any Miniſter entring into Poſſeſſion, or meddling with the Profits *before ſuch Compoſition*, ſhall pay to the King *double* the Value of the Firſt-Fruits. 26 *Hen.* VIII. *c.* 3.

Q. Is the Leſſor or the Leſſee chargeable with Firſt-Fruits and Tenths?

A. The Leſſor.

TIT. XXXVI.

Reſidence, Non-Reſidence, and Curates.

Q. WHAT Obligation is there upon Incumbents to be Reſident upon their Benefices by Statute?

A. By 21 *Hen.* VIII. *c.* 13. He that is *wilfully* abſent from his Benefice for one Month together, or two Months in the whole Year, though at different Times, ſhall forfeit for every ſuch Default ten Pounds, one half to the King, the other to him who will ſue for it — but Information muſt be brought only in the King's Courts. And by 13 *Eliz. c.* 20. He that is abſent from his Benefice with Cure, above eighty Days in the Year, vacates any Leaſe, or other Bond or Covenant made, whereby he lets out his Benefice, or any Part of it, and forfeits a Year's Profit of his Benefice, to be diſtributed by the Ordinary among the Poor of the Pariſh. But, *Note*, that the Leaſe is not void *ab initio*, but only from the Time of ſuch Abſence.

Q. What is accounted Reſidence upon a Benefice?

A. It has been adjudged, that he who upon all Occaſions reſorts to his Pariſh, and ſerves the Cure thereof duly, though he does not dwell in the ſame Pariſh, ſaves himſelf from the Penalties of the *Stat.* 13 *Eliz. c.* 20. * But nothing is ſufficient Reſidence by 21 *Hen.* VIII. *c.* 13. but dwelling in the Parſonage or Vicarage Houſe, if there be one.

Q. What Perſons are excuſed from Reſidence?

A. By 21 *Hen.* VIII. *c.* 13. Chaplains to the King, Royal Family, and Nobility, or other great Perſons, mentioned Tit. XXXVII. are excuſed from Reſidence, during their Attendance upon thoſe who retain them: And by 25 *Hen.* VIII. *c.* 16. all the twelve Judges, and the Attorney and Sollicitor General, may Qualify one Chaplain, and excuſe him from Reſidence during Attendance. And by 33 *Hen.* VIII. *c.* 28. the Chancellor of the Dutchy of *Lancaſter*, and Groom of the Stole, and ſome others, have the ſame Privilege; but none of the Perſons mentioned in theſe two laſt Acts, can qualify a Chaplain to hold a *Plurality.*

Q. Who elſe are excuſed beſide Chaplains?

A. He that has two Benefices, and reſides upon one of them, is excuſed from reſiding upon the other by equitable Conſtruction: Alſo he that has a Dignity and Benefice, by reſiding upon one, is excuſed from Reſidence

on

on the other, by the Words of the Statute; he that is without Fraud under Confinement for Debt, or removes for his Health by the Advice of his Phyſicians; he that is employed abroad in the King's Service, or is under an Injunction from the Lord Chancellor to attend a Suit; Heads and Profeſſors in the Univerſity, and Clergymen under forty Years of Age reſiding there, and hearing the Lectures, and doing Exerciſe in Perſon; he that reſides upon a Prebend; the Maſter of the Rolls, and Dean of the Arches, all Chancellors or Commiſſaries of Archbiſhops, or Biſhops, Maſters in Chancery, and Advocates of the Arches, being ſpiritual Men, during their Employment in their reſpective Offices.

Q. Does Reſidence upon one Benefice totally excuſe from Reſidence on the other;

A. No: Every Pluraliſt, by ſpecial *Proviſo's* in the Body of his Diſpenſation, is obliged to reſide two Months in every Year on that Benefice from which he is abſent for the moſt part, and in both his Churches to preach every Year thirteen Sermons.

Q. Is there any Difference between a Rector and a Vicar, in point of Obligation to Reſidence?

A. They are both upon the ſame foot by *Statute Law*; only the Vicar is ſworn to Reſidence, the Rector is not: But this Oath is with a Condition, *niſi aliter diſpenſatum fuerit*; ſo that if the Vicar be diſpenſed with, there is in this reſpect no Difference between them.

Q. How is Non-reſidence puniſhable by Eccleſiaſtical Cenſures?

A. Tho' the Biſhop *may content* himſelf with Sequeſtration, and other Cenſures of an inferior Nature, which we find ſometimes inflicted, yet he may proceed, and that hath been the more frequent Puniſhment, to *Deprivation.*

Q. What Care is to be taken of a Benefice whereon a Pluraliſt is non-reſident?

A. Every beneficed Pluraliſt ſhall have his Benefice ſupplied by a Curate, that is a ſufficient and licenced Preacher. *Can.* 41.

Q. What Privileges are allowed to reſident Curates?

A. A reſident Curate may take a Leaſe of the Parſonage, which Nobody elſe can: If he is deſirous to teach School, a Licence ſhall be granted to no other; provided that he ſhall have no Licence in Country Towns where there is a publick School founded, and a Maſter allowed already. *Can.* 78.

Q. What Qualifications are required in Curates?

A. No Curates ſhall be permitted to ſerve in any Place, without Examination and Admiſſion of the Biſhop, or Ordinary; nor remove, without Teſtimonials of the Biſhop of the Dioceſe, or Ordinary of the Place, whence they came, of their Honeſty, Ability, and Conformity to the Eccleſiaſtical Laws of the Church of *England. Can.* 58.

Q. Can a Curate ſerve more than one Church or Chapel upon one Day?

A. Not

A. Not except that Chapel be a Member of the Pariſh-Church, or united thereto; or unleſs the ſaid Church or Chapel be not able, in the Judgment of the Biſhop or Ordinary, to maintain a Curate. *Ib.*

Q. What Care is taken for the Allowance of temporary Curates?

A. By 12 *Ann. c.* 12. If any Rector or Vicar ſhall preſent any Curate to the Biſhop or Ordinary to be licenſed, to ſerve the Cure in his Abſence, the Biſhop, having regard to the Greatneſs of the Cure, and Value of the Living, ſhall, before granting ſuch Licence, appoint, under his Hand and Seal, a Stipend not exceeding 50*l. per Annum*, nor leſs than 20*l.* to be paid at ſuch Times as he ſhall think fit, by the ſaid Rector or Vicar.

Q. Is a Curate, who is not licenced by the Biſhop, and legally qualified, a Curate in the Eye of the Law?

A. No, and therefore a Leaſe to ſuch a one is null; nor can he, without ſome ſpecial Agreement, recover his Stipend of the Incumbent.

Q. Can a Vicar have a Curate?

A. There is an old Saying, *Vicarius non habet Vicarium, a Vicar hath not a Subſtitute*; but by long Practice, 'tis now as allowable for a Vicar to have a Curate as a Rector.

Q. What Proviſion is made when the Incumbent is rendered uncapable of the Adminiſtration of his Cure, by any habitual Diſtemper of Mind, as Frenzy, Lunacy, *&c.*---?

A. The Ordinary may appoint a *Coadjutor* to receive the Profits, and discharge the Burdens; with an Obligation to be accountable to him, when called upon: Coadjutors, being always Clergymen, might also have the *spiritual* Part committed to them; but this was no Part of the Office of a *Coadjutor* as such, which did anciently relate to the *Temporalties* only.

TIT. XXXVII.

Plurality *and* Commendam.

Q. WHAT Restraint is there upon Pluralities by Statute?

A. Any Person having a Benefice of *eight* Pounds or above *per Ann.* in the King's Books, if he be instituted and inducted, (* it has been adjudged, if he be *instituted* only) into another, no matter of what Value, or whether rated at all in the King's Books, *without Dispensation*, the first Benefice shall be void.

Q. Are Benefices under 8 *l. per Ann.* in the King's Books void by the Acceptance of a second Benefice?

A. By the Common Law they are only voidable. * Tho' the Patron may present, if he will, yet no Lapse incurs if he *do not present*: Unless the Bishop void the Church by Sentence declaratory, and give Notice thereof to the Patron; and then it is agreed on all hands, that the Patron must present at his Peril within the six Months.

Q. Who

Q. Who are qualified for Diſpenſation?

A. By 21 *Hen.* VIII. *c.* 13. Spiritual Perſons of the King's Council may have Diſpenſation for three Benefices, and all Chaplains of the King, Queen, and Royal Family for two; likewiſe every Archbiſhop may have eight Chaplains, and every Biſhop, ſix; every Duke, ſix; every Marquis and Earl, five; every Viſcount, four; the Lord High Chancellor for the Time being, every Baron and Knight of the Garter, three; every Dutcheſs, Marchioneſs, Counteſs, and Baroneſs, being Widows, two; the Treaſurer and Comptroller of the King's Houſe, the King's Secretary and Dean of his Chapel, the King's Almoner and Maſter of the Rolls, two; the Chief Juſtice of the *King's-Bench*, one; the Warden of the five Ports, one. All which Chaplains may purchaſe Licence or Diſpenſation, to receive, have, and keep two Benefices, with Cure of Soul.

Alſo the Brethren and Sons of Temporal Lords, born in Wedlock, and the Brethren and Sons of Knights; but not of Baronets, which Dignity hath been created ſince the making of this Act.

Alſo Doctors and Batchelors of Divinity and Canon Law in any of the Univerſities of this Realm, and *not by Grace only, i. e.* having performed the ſtatutable Exerciſes in order to ſuch Degree, without any Favour or Diſpenſation therein, may have Licence to hold two Benefices with Cure.

Q. Can the King's Chaplains have Diſpenſation only for two Benefices?

A. They may have as many of *the King's Gift* as he ſhall pleaſe to give them, without incurring the Penalty of this Statute.

Q. If a Chaplain be removed from the domeſtick Service of the Family --- ?

A. * He remains Chaplain at large, and ſo a Chaplain within this Statute.

Q. Can a Chaplain, once legally qualified, be diſcharged, to make way for others?

A. No.

Q. If a Chaplain retained above the Number be promoted, before thoſe who were duly retained, according to the Statute, ſhall ſuch Retainer above the Number avail him?

A. * No, nor diveſt thoſe, who were duly retained, of the Right of purchaſing Diſpenſation: Nor ſhall he ever have the Benefit of ſuch Retainer, even though the reſt are dead; unleſs it be renewed upon the Death of one of thoſe who made up the ſtatutable Number, inaſmuch as the Retainer was null *ab Initio*.

Q. If a Perſon is qualified to retain under ſeveral Capacities, as, Baron and Warden of the Ports, Baron and Biſhop, *&c.*---?

A. * He can only qualify in his higheſt Capacity.

Q. Is the Retainer of Noblewomen, being Widows, ended by their Marriage?

A. No; * the Retainer is good after Marriage, and that whether they marry under the Degree of a Baron or no.

Q. Can Diſpenſation be had for *ſuch a Num-*

Number of Benefices, without Specification, or with an additional Power to exchange and take others, keeping within the Number, in Point of Poſſeſſion, at one and the ſame Time?

A. Such have been heretofore granted, and the Statute ſeems capable of ſuch a large Interpretation; but the later and ſafer Way hath been, to grant Diſpenſation only for preventing the Voidance of a *Benefice in Poſſeſſion* by taking a ſecond.

Q. Can * Minors retain Chaplains within this Act?

A. Yes.

Q. If the Perſon who retains dies, or is removed, or is attainted, before any Effect of the Retainer ---- ?

A. It is gone, and ſhall have no Effect afterwards; but if it taketh Effect before, it continues good notwithſtanding Death, or Attainder, or Removal.

Q. How are Diſpenſations for Pluralities limited by the Canon?

A. None ſhall have Diſpenſation, who is not Maſter of Arts, at leaſt, in one of the Univerſities, and a licenſed Preacher: He ſhall likewiſe be by good and ſufficient Caution bound to make his perſonal Reſidence in each of his Benefices, for ſome reaſonable Time in every Year; provided alſo that the ſaid Benefices be not more than thirty Miles diſtant aſunder, and that he have under him a ſufficient Curate in the Benefice upon which he is not ordinarily Reſident. *Can.* 41.

Q. Can-

Q. Cannot Benefices be held above thirty Miles distant?

A. It was usual heretofore to obtain Licence from the King, to take two Benefices beyond the Distance of thirty Miles, by way of Dispensation with this Canon: And in such Cases we find this Clause in Faculties granted by the Archbishop, *Licentia Regia pro distantia extra triginta Milliaria prius nobis concessa*, and the like; by reason of which Licence and Clause, they have been usually called *Royal Dispensations*: But very few (if any) such have been granted since the Revolution. And * in regard to *Statutes*, this Practice is expresly prohibited; it being enacted, That no Dispensation by *non obstante* of or to any Statute, or any Part thereof, shall be allowed; but that the same shall be held void, and of none Effect, except a Dispensation be allowed of in such Statute.

Q. What Method must a Presentee take to obtain Dispensation?

A. If he is a Chaplain, he must have his Qualification registered in the Faculty-Office; or if qualified by his Degree, an Attestation of it from the Register of the University; (And so he must if he be but Master of Arts.) He must also have Letters from the Bishops in whose Dioceses the Benefices are, if in two; or the Bishop of the Diocese, if in the same; signifying their Consents, and certifying the Value of the Livings, both in the King's Books and the reputed Value, also the reputed Distance. With these, and the usual Testimonials

nials of his good Behaviour, *&c.* he muſt wait upon the Archbiſhop, and Petition, to which the Archbiſhop gives his *Fiat:* His Diſpenſation is, upon that, made out at the Faculty-Office; where he gives Security, as above, for his Reſidence, *&c.* And after, he muſt go to the Lord Chancellor, for Confirmation under the Broad Seal. It may not be improper to have Certificates and Letters teſtimonial, as well for the Lord Chancellor as the Archbiſhop: But I think they are not generally required.

Q. What Stamp is required for a Diſpenſation?

A. Treble forty Shillings.

Q. What is a *Commendam?*

A. A Faculty of Retention and Continuation of a Benefice in the ſame Perſon and State wherein it was, notwithſtanding ſomething intervening, as a Biſhoprick, or the like, that without ſuch a Faculty would have avoided it.

Q. How many Sorts of *Commendam* are there?

A. Two, a *Commendam recipere*, and a *Commendam retinere.*

Q. Why is ſuch a Faculty or Diſpenſation neceſſary?

A. * Becauſe the Poſſeſſion of a Biſhoprick doth of common Right void all other Promotions.

Q. How ſoon muſt the *Commendam* come to *continue the Poſſeſſion?*

A. It.

A. It being the Doctrine * both of Canon and Common Law, that former Promotions are not vacant but by *Consecration* in Case of Creation, and by *Confirmation* in Case of Translation; if such Dispensation comes *before* these, it comes Time enough to continue the Possession; but otherwise it comes too late.

Q. In what Manner are *Commendams* to be granted?

A. By the King, either singly and by himself, * as many of the Law Books hold; or at least by Command to the Archbishop to exert the Right of Dispensation vested in him by Statute 25 *Hen.* VIII. *c.* 21. as the ordinary Method is.

Q. Can Headships of Colleges and Hospitals be granted *in Commendam*?

A. Yes, as well as Dignities and Benefices.

Q. Can a Bishop take a *Commendam* in his own Diocese?

A. Yes, being under the Correction of the Metropolitan.

Q. Is the Patron's Consent necessary before a *Commendam* can be granted?

A. Yes. In a *Commendam retinere*, the King, who is Patron by Promotion, signifies his Consent by his Mandate to the Archbishop to grant Dispensation; and if the *Commendam* be by *Recipere*, it is either to take a Promotion in the Bishop's *own* Gift, and so his *Acceptance* is a Consent; or in the Gift of some *other* Patron, and then the Consent of such Patron must

muſt be given in an authentick Manner, and mentioned in the Diſpenſation.

Q. Doth a *Commendam capere* (*i. e.* a Dignity or Benefice taken by a Biſhop *after* Conſecration, and without Inſtitution) create a *proper Incumbency?*

A. No, the Incumbency created by a *Commendam capere* ſeems to be with regard to the Profits only; and ſo far it is ſtill underſtood to give a Right, as may be gathered from the Language of ſuch *Commendams*, which is *abſque ulla inſtitutione, inductione, &c. in Commendam acceptare--ac de Fructibus, Redditibus, cæteriſq; Juribus & Emolumentis diſponere, ac in proprios tuos uſus convertere, &c.*

Q. Of how many Kinds are *Commendams*, with regard to the Extent of Time?

A. Either Temporary or Perpetual, at the Pleaſure of the Prince: When temporary, the preciſe Time is expreſſed and limited in the Diſpenſation; when perpetual, the Stile is *Quamdiu vixeris & eidem Epiſcopatui præfueris.*

Q. Can a *Commendam* Temporary in *Retinere* be prolonged or removed?

A. Yes; and being expired, a new *Commendam* of the ſame Benefice may be granted in Perpetuity by *Capere.*

Q. If the *Commendam* be limited to a certain Time, can the Crown Preſent at the Expiration of it?

A. Yes, by Prerogative Royal; unleſs the commendatory Biſhop dies, or reſigns, before the

the Expiration of the Term; * for then the Turn of the Crown is ſerved, and the Patron ſhall Preſent: And ſo it is likewiſe ſerved, if the *Commendam* was originally unlimited, that is, during the Life of the Perſon, and his Poſſeſſion of ſuch See.

Q. If a Biſhop who is poſſeſſed of a *Commendam* is tranſlated to another See ---?

A. The ſame *Commendam* may be continued, * but it muſt be by a *new Diſpenſation*.

Q. What is the Deſign of *Commendams*?

A. To ſupport the Dignity of the Epiſcopal Character, which ſince the Time of the Reformation hath greatly *needed* Support in many Sees.

TIT. XXXVIII.

Union *and* Diviſion *of* CHURCHES.

Q. WHERE poor Parſonages are contiguous, how may they be united?

A. An Union of two Churches, or of a Church and Chapel, one not above *6 l.* Value in the King's Books, and not above a Mile diſtant, may be made with Aſſent of Ordinary, Incumbents, and Patrons, in ſuch Manner and Forms as in Writing, under their Hands and Seals, ſhall be ſet forth. 37 *Hen.* VIII. *c.* 21.

Q. Is the Power of Ordinaries to judge of the Fitneſs or Unfitneſs of Unions, (which they had by the Common Law) taken away by

by this Statute, and reſtrained to the Circumſtances here-mentioned, beyond which no Union at all can now be made?

A. * No: The Statute is in the Affirmative only, without the Addition of a Negative, in which Caſe the *Common Law* is never taken away; and therefore the Rule of Unions, and Power of making them, which the Ordinaries had at Common Law, continue as before, notwithſtanding this Statute.

Q. What Care is taken upon an Union or Conſolidation of Churches to prevent a Diminution of the Firſt-Fruits and Tenths?

A. 'Tis provided that they ſhould be paid by both, according to their reſpective Valuations.

Q. Could ſuch Union be made by Virtue of this Act in Cities or Towns Corporate?

A. No, not without the Conſent of the Mayor, Sheriffs, and major Part of the *Commonalty.* But by 17 *Car.* II. *c.* 3. in every Corporation the Biſhop may unite two or more Churches, with the Conſent of the Mayor, Aldermen, and Juſtices of the Peace, Bailiff or Bailiffs, or other Chief Officer or Officers, or the major Part of them, and of the Patrons, *&c.* and determine which ſhall be the Place of Worſhip, and which the Church Preſentative, and all Tithes and Duties ſhall be paid to the Incumbent of the Preſentative Church.

Q. Would not ſuch Union create Confuſion in the Pariſh Rates, *&c?*

A. The

A. The Pariſhes ſhall continue diſtinct as to all Rates, Parochial Charges, and Duties, notwithſtanding; and Churchwardens ſhall be elected and appointed for each Pariſh. Firſt-Fruits and Tenths, Procurations and Penſions to continue as before.

Q. What Exceptions are there to this Act?

A. No Union ſhall be valid till Regiſtred in the Regiſter Book of the Biſhop of the Dioceſe, nor where the Revenue is in all above 100 *l. per Annum* clear, unleſs the Pariſhioners, or the major Part of them, deſire it. The Incumbent of a Church united muſt be a Graduate.

Q. One of the Churches united being Demoliſhed, are the Pariſhioners bound to pay towards the Repairs and Ornaments of the other?

A. Yes, ſuch Share as the Archbiſhop or Biſhop, who ſhall make the Union, ſhall direct, and for want of ſuch Direction, one third Part; but if both are ſtanding, then the Repairs and Ornaments ſhall be provided for as they were at Common Law, *i. e.* by the Pariſhioners of each Pariſh reſpectively.

Q. Upon what good and Canonical Reaſons ſhould the Union or Conſolidation of Churches be founded?

A. The principal Reaſons aſſigned by the Canon Law, are, *Propter Hoſpitalitatem, propter Vicinitatem locorum, propter Parochianorum defectum, propter Paupertatem ſeu Exilitatem.*

Q. Can Livings be united of greater Value than what is expreſſed in the Statute?

A. Yes; * the Common Law of Unions is not taken away nor altered by them.

Q. Is the King's Conſent neceſſary to an Union?

A. No.

Q. Are Unions *in Futuro* good, as well as *in præſenti?*

A. * Yes; and therefore if two Churches are full, and one is duly united to the other *in Futuro*, when either ſhall become void, the ſurviving Incumbent may enter upon the void Living, without any other Title than that which he received by the Act of Union.

Q. Does Union make any Alteration in the Nature of Advowſons?

A. * No; the Nature of Advowſons continues the ſame; as, if one be Appendant, and the other in Groſs, and that which is Appendant is made the Preſentative Church, and the Patron of the Church in Groſs hath the firſt Turn, yet ſhall not the whole Advowſon be in Groſs, but it ſhall remain *Appendant* for his Turn, who was Patron of the Advowſon *Appendant*; and in *Groſs* for his Turn, who was Patron of the Advowſon *in Groſs*.

Q. May a ſecond Benefice be taken by Diſpenſation within the Statute of Pluralities, where an Incumbent hath already two Churches united?

A. * Yes; becauſe by Union they are made but one Eccleſiaſtical Benefice.

Q. Is Diviſion of Churches allowed?

A. No; not without particular Act of Parliament.

TIT. XXXIX.

Eccleſiaſtical POWER *and* JURISDICTION *in general.*

Q. HOW is the Realm of *England* divided in reſpect of the People?

A. "The Realm of *England* is an Empire "governed by one ſupreme Head and King, "having Dignity and Royal State of the Im- "perial Crown of the ſame, unto whom a "Body Politick, compact of all ſorts and de- "grees of People, divided in Terms, and by "Names, of *Spiritualty* and *Temporalty*, been "bounden and owen to bear next to God, a "natural and humble Obedience. 28 *Hen.* "VIII. *c.* 12.

Q. What is the Buſineſs of the Body Spiritual?

A. "To declare and determine all Doubts "when any Cauſe of the Law Divine hap- "pens to come in Queſtion, and to adminiſter all ſuch Offices and Duties, as to their "Rooms Spiritual doth appertain: For the "due Adminiſtration whereof, the King's "moſt noble Progenitors have ſufficiently en- "dowed the ſaid Church with Honour and "Poſſeſſions. *Ibid.*

Q. What

Q. What is the End of the Law *Temporal?*

A. " For Trial of Property of Lands and " Goods, and for the Conſervation of the Peo- " ple of this Realm in Unity and Peace with- " out Rapine and Spoil.

Q. By whom is this Law adminiſtred?

A. " By ſundry Miniſters and Judges of " the other Part of the ſaid Body Politick, " called the *Temporalty.*

Q. Do theſe Authorities and Juriſdictions interfere with each other?

A. " No, they conjoin together in due " Adminiſtration of Juſtice, the one to help " the other." The Conſequence of which mutual Aſſiſtance is, with regard to *Legal Conſtitution*, * what my Lord *Coke* ſays; the Temporal and the Eccleſiaſtical Law are ſo *coupled* and *interwoven*, that the one cannot *ſubſiſt* without the other.

Q. How does the Spiritual Court aſſiſt the Temporal?

A. * As, when Iſſue is join'd in the Temporal Court, upon the Loyalty of Marriage, general Baſtardy, or the like; the King writes to the Biſhop of that Dioceſe, as mediate Officer and Miniſter to his Court, *to certify* it.

Q. How doth the Temporal Court give Aſſiſtance to the Spiritual?

A. As, if any Cauſe be depending in the Spiritual Court, and it is ſuſpected that the Party proſecuted will fly beyond Sea, they may have a *Ne exeat regnum:* And ſo, if Sentence in the Eccleſiaſtical Court is diſobeyed,

and the Party Excommunicated, the Writ for taking and impriſoning the Offender goes of courſe.

Q. What Styles may Biſhops and other Spiritual Perſons exerciſing Juriſdiction Eccleſiaſtical, lawfully uſe?

A. By the Statute of 1 *Edw.* VI. *c.* 2. all Summons's and Citations, and other Eccleſiaſtical Proceſs was to be made in the *King*'s Name, with the *Teſte* of the Archbiſhop or Biſhop, and the King's Arms was to be put in their Seal of Office: But that Act was *repealed* by an Act of 1 *Eliz.* reviving 25 *H.* VIII. *c.* 20. According to the Tenor of which revived Statute, Archbiſhops and Biſhops, Elected, Confirmed, and Conſecrated, ſhall be *obeyed* in all manner of Things, according to the Name, Title, and Dignity, that they ſhall be choſen and preſented to, and *Do and Execute*, in every Thing and Things, touching the ſame, as an Archbiſhop or Biſhop of the Realm, without offending the Prerogative Royal of the Crown and the Laws and Cuſtoms of this Realm, might at any *Time heretofore* do. Accordingly, when in the Reign of King *Charles* I. Attempts were made to place the Eccleſiaſtical Juriſdiction upon the Foot of the ſaid Statute of *Edw.* VI. as ſtill in Force, a Proclamation was iſſued to vindicate the legal Proceedings of his Majeſty's Eccleſiaſtical Courts and Miniſters, from the unjuſt and ſcandalous Imputation of invading or intrenching on his Royal Prerogative, in Purſuance

ance of the Opinion of the twelve Judges, to whom this Matter was referred, and who did unanimouſly concur and agree, and certified it under their Hands, that Proceſſes might iſſue out of the Eccleſiaſtical Courts in the Name of the Biſhops, *&c.* and that the Statute 1 *Edw.* VI. *c.* 2. which enacted the contrary, was *not in Force.*

Q. What ſeems to have been the plain Intention of the King and Parliament in that Statute?

A. No more than that the Appointment and Conſecration of Biſhops ſhould be independent from the Pope, and that they ſhould renounce his Authority; and, having done that, ſhould proceed in the *Exerciſe* of the Epiſcopal Office, in the ſame manner as their Predeceſſors had *done.*

Q. Are Spiritual Perſons diſabled from exerciſing Temporal Juriſdiction?

A. They were by 16 *Car.* I. *c.* 27. but that Act was repealed 13 *Car.* II. *c.* 2. as prejudicial to the Rights of Parliament, and contrary to the Laws of the Land, and as found by Experience to be incovenient.

TIT. XL.

SYNODS *and* CONVOCATIONS *of* BISHOPS *and* CLERGY.

Q. MAY General Councils be gathered together without the Commandment and Will of Princes?

A. No. *Artic.* 21.

Q. Of what Authority are their Determinations?

A. Foraſmuch as they be an Aſſembly of Men whereof all be not governed with the Spirit and Word of God, they may err, and ſometimes have erred, even in Things pertaining to God. Wherefore Things ordained by them as neceſſary to Salvation, have neither Strength nor Authority, unleſs it may be declared that they be taken out of Holy Scripture.

Q. Is it lawful for any ſort of Miniſters, and Lay Perſons, or either of them, to make Canons without the King's Authority?

A. No; and to affirm that it is, ſhall be Excommunication *ipſo facto*. *Can.* 12.

Q. What is the true Church of *England* by Repreſentation?

A. The Sacred Synod of this Nation in the Name of Chriſt, and by the King's Authority aſſembled; and to affirm the contrary ſhall be Excommunication. *Can.* 139.

Q. What does the Convocation or Sacred Synod conſiſt of?

A. The Court of Convocation of the Clergy (aſſembled by Virtue of the King's Writ in a National Synod) conſiſts of the whole Clergy, either preſent in Perſon or by Proxies.

Q. How many Houſes are there of Convocation?

A. There is an Upper Houſe, where the Archbiſhops and Biſhops ſit; and a Lower Houſe,

Houſe, where Deans, Archdeacons, and Proctors for the Chapters and Dioceſan Clergy do ſit.

Q. How many Proctors are there for the Dioceſan Clergy?

A. In the Province of *York*, two for every Archdeaconry; but in the Province of *Canterbury* two only for every Dioceſe.

Q. Who is Preſident of the Convocation?

A. The Archbiſhop of *Canterbury*; who Prorogues and Diſſolves it at the Diſcretion of the King.

Q. How is the Juriſdiction of the Convocation exerciſed?

A. In making Canons with the King's Licence and Aſſent, and in examining and cenſuring Heretical or Schiſmatical Books or Perſons.

Q. Are Canons obligatory upon thoſe who are abſent, as well as thoſe who are particularly aſſembled?

A. Yes, Synods conclude as well the Abſent as Preſent. *Can.* 140.

Q. Are the Laity bound by the Canons?

A. * The Convocation, with the Licence and Aſſent of the King under the Great Seal, may make Canons for the Regulation of the Church, and that, as well concerning Laicks as Eccleſiaſticks. All that is required of them in making new Canons, is, that they confine themſelves to Church Matters, and under proper Reſtraints; and a Canon ſo made is the Law of the Kingdom, as well as an Act of Parliament.

Q. What Reſtraints are they under as to the *Matter* of the Canons?

A. No Canons, Conſtitutions, or Ordinances, ſhall be made or executed by Authority of the Convocation, which ſhall be contrariant or repugnant to the King's Prerogative Royal, or the Cuſtoms, Laws, or Statutes of this Realm. 25 *Hen.* VIII. *c.* 19.

Q. What Penalty do they incur by acting without the King's Licence?

A. They ſhall not preſume to attempt, alledge, claim, or put in Uſe any Conſtitutions or Ordinances, Provincial or Synodal, in their Convocations, nor to Exact, Promulge or Execute any, in Time to come, without the King's Royal Aſſent and Licence, upon Pain of Impriſonment, and Fine at the King's Will. *Ibid.*

Q. What Privileges have the Clergy in their Attendance upon Convocation?

A. They and their Servants, coming, tarrying, and returning from Convocation, ſhall have the ſame Privilege from Arreſts, as Members of Parliament. 8 *Hen.* VI. *c.* 1.

Q. In what Caſe does an Appeal lie to the upper Houſe of Convocation?

A. In Cauſes Eccleſiaſtical, that touch the King, an Appeal may be made from the Court of Arches or Audience of any Archbiſhop, to the Upper Houſe of Convocation, whoſe Judgment ſhall be final. 24 *Hen.* VIII. *c.* 12.

Q. In what Manner do the Clergy contribute to the Publick Taxes?

A. They

A. They uſed formerly to tax themſelves in Convocation, granting Aids and Subſidies, for their own Body; 'till three or four Years after the Reſtoration, they were brought to wave their ancient Privilege, and ſuffer themſelves to be included in the Money-Bills prepared by the Commons: And to encourage their Aſſent to this Ceſſion, two of the four Subſidies which they had granted the King, and which Grant had been confirmed by an Act of Parliament, were to be remitted to them; and over and above, they had the Promiſe of a Clauſe for ſaving their ancient Rights. This Security was accordingly given, and a very clear comprehenſive Proviſo inſerted in the Statute for this Purpoſe. "Provided always, "That nothing herein contained ſhall be drawn "into Example, to the Prejudice of the antient "Rights belonging unto the Lords Spiritual "and Temporal, or Clergy of this Realm, or "unto either of the ſaid Univerſities, or unto "any Colleges, Schools, Alms-Houſes, Hoſpitals, or Cinque-ports. 16, 17 *Car.* II. *c.* 1.

TIT. XLI.

Conſtitutions *and* Canons *of the* CHURCH *of* ENGLAND.

Q. ARE *foreign* Canons and Conſtitutions obligatory to us?

A. Not as *ſuch:* But thoſe which have been long and generally received, allowed, and practiſed among us, may well remain Laws to us.

Q. The

Q. The whole foreign Canon Law then, it seems, was not received here in *England*---?

A. No, as appears from the famous Case of Legitimation of Children born before Marriage, in which Point the Lords in Parliament declared, *Nolumus leges Angliæ mutari*; tho' *Alexander* III. had published an express Canon for that Purpose, and from several other Instances. *Vide* the *Codex*, *p.* 998.

Q. Is long Use and Custom sufficient to graft foreign Laws into the *English* Constitution?

A. Yes, so it is declared in Parliament, 25 *Hen.* VIII. *c.* 21. "Where this your "Grace's Realm, recognizing no Superior "under God but only your Grace, hath been, "and is free from Subjection to any Man's "Laws, but only such as have been devised, "*&c.* within this Realm, or to such other as "by Sufferance of your Grace and your Proge-"nitors, the People of this your Realm have "taken at their Liberty, by their Consent, to "be used amongst them, and have bound "themselves by long Use and Custom to the "Observance of the same; not as to the Obser-"vance of the Laws of any foreign Prince, Po-"tentate, or Prelate, but as to the Customs and "antient Laws of this Realm, originally esta-"blished as Laws of the same, by the said "Sufferance, Consent, and Custom, and none "otherwise."

Q. What was done towards Reformation of the Canon Law in the Time of King *Henry* VIII.?

A. Upon

A. Upon Complaint of the Clergy, that divers of the ancient Canons were prejudicial to the Prerogative, and onerous to the Subject; and upon their Petition, that an Examination ſhould be made, to ſee which ſhould be abrogated, and which continued; by 27 *Hen.* VIII. *c.* 19. the King had Power to appoint thirty-two Perſons (Half Clergy, and Half Laity) of the upper and nether Houſe of Parliament, to renew the antient Canons and Conſtitutions, in Order to a new Body of Eccleſiaſtical Laws: And 'till ſuch Review could be compleated, the antient Canons, *&c.* which were not contrary to the Laws of the Land, and the Prerogative Royal, were to continue to be uſed and executed as before.

Q. What was done in this Review?

A. Purſuant to the Powers given, thirty-two Perſons *were appointed*; and they had drawn the whole into Form, ſo as nothing was wanting but the Confirmation of the King. This Deſign was taken up again in King *Edward* VI's Time; But having been defeated by his Death, reſted 'till 1562; when it was propoſed in Convocation to move Her Majeſty, that certain learned Men, Biſhops and others, might be appointed for that Purpoſe, and their Orders confirmed by Act of Parliament. Afterwards, by the Endeavours of Archbiſhop *Parker*, it was ſet on foot in the Parliament in the 13 *Eliz.* and by a leading Member recommended to the Conſideration of the Houſe of Commons; but after that we hear no more of it.

it. Preparatory to the gaining a Parliamentary Eſtabliſhment, Care was taken to have the whole Work publiſhed, under the Title *Reformatio legum, &c.* as we now ſee it, by *John Fox*; the Concluſion of whoſe *Preface* plainly intimates the main Deſign of the Publication: *Optandum, quod per præmaturam mortem Regis illius negatum eſt Eccleſiæ felicitati, per feliciora tempora, Sereniſſimæ Reginæ noſtræ* Elizabethæ *ſuppleatur, accedente publica hujus nunc Parliamenti auctoritate.*

Q. What Authority have the preſent Canons?

A. They were ratified by King *James* I. 1603, in the firſt Year of his Reign, for himſelf, and his Heirs, and lawful Succeſſors. The Canons and Conſtitutions which were made and publiſhed in the Reign of Queen *Elizabeth*, were confirmed only during the Life of the Queen; and that was the Reaſon why, upon her Death, they proceeded with ſo much Expedition to the compiling of the preſent Canons, which are taken, in the main, out of the Injunctions and Canons that had been made in the three foregoing Proteſtant Reigns.

Q. What Care is taken that the Canons ſhould be publickly known?

A. In the King's Letters Patents for confirming them 'tis enjoined, That every Miniſter ſhall, in the Pariſh Church or Chapel where he hath Charge, read all the Canons of 1603 once a Year, upon ſome *Sundays* or *Holidays* in the Afternoon before Divine Service; dividing the ſame

ſame in ſuch ſort, that one Half may be read one Day, and the other another Day.

TIT. XLII.

Viſitation, *General and Parochial*; *and of* Preſentments, *and* Procurations.

Q. HOW often are Biſhops bound to viſit their Dioceſes?

A. Once every three Years. The antient Law was, that the Biſhop ſhould viſit *once* a Year; but then it is underſtood of *Parochial* Viſitations, or a perſonal repairing to every Church: After, as Dioceſes grew larger, the Biſhops were indulged to cite the Clergy and People to attend Viſitations at particular Places.

Q. Whence have aroſe the Times of Viſitations, as they are now uſually fixed about *Eaſter* and *Michaelmas*?

A. They have evidently ſprung from the two yearly Synods of the Clergy, which the Canons of the Church required to be held by every Biſhop, about thoſe two Seaſons, in their reſpective Dioceſes.

Q. To whom now belongs the Care of Parochial Viſitation?

A. As to *Parochial Viſitation*, or the Inſpection into the Fabricks, Manſions, Utenſils, and Ornaments of the Church, that Care hath long been devolved upon Archdeacons.

Q. What was the Office of Archdeacons, at their firſt Inſtitution in the antient Church?

A. They

A. They were only to attend the Bishops at Ordination, and other publick Services in the Cathedral: But being afterwards occasionally employed in the Exercise of Jurisdiction, not only the Work of *Parochial Visitation*, but also the holding of general Synods or Visitations, when the Bishop did not visit, came by Degrees to be known and established Branches of the Archidiaconal Office, as such; which by this Means attained the Dignity of *Ordinary*, instead of *Delegated* Jurisdiction.

Q. Can the Bishop visit annually if he pleases?

A. No; he is restrained from it, upon account of the Profits which attend the Act of Visiting.

Q. What is a chief and principal Cause and Use of Visitation?

A. That the Bishop, Archdeacon, or other assign'd to visit, may get some good Knowledge of the State, Sufficiency, and Ability of the Clergy, and other Persons whom they are to visit.

Q. How is this effected?

A. Every Parson, Vicar, Curate, School-Master, or other Person licensed whatsoever, is, at the Bishop's first Visitation, or at the next Visitation after his Admission, to shew and exhibit to the Bishop his Letters of Orders, Institution, and Induction, and all other his Dispensations, Licences, or Faculties whatsoever; to be by the said Bishop either allow'd, or, if there be just Cause, disallowed and rejected:

jected: And being by him approved, to be, as the Cuſtom is, ſigned by the Regiſter; for which the whole Fees accuſtomed to be paid in the Viſitations, in reſpect of the Premiſes, ſhall be paid only once in the whole Time of every Biſhop, and afterwards but Half of the ſaid accuſtomed Fees, in every other Viſitation during the ſaid Biſhop's Continuance.

Q. Can the Archdeacon require *Exhibits*?

A. None but the Biſhop, or other Perſon exerciſing Eccleſiaſtical Authority by Commiſſion from him, hath Right, *de jure communi*, to require Exhibits from the Clergy: If therefore any Archdeacons are ſo intitled, it can be only upon the Foot of Cuſtom; and the Beginning of that, hath probably been an Encroachment.

Q. What is another Part of the Buſineſs of Viſitations?

A. Receiving Preſentments.

Q. Who are to make Preſentments?

A. Churchwardens, or Sideſmen; and if they neglect, or refuſe, the Miniſter may preſent.

Q. Has this Buſineſs of Preſenting been all along proper to Churchwardens?

A. The Churchwardens have for many hundred Years been a Body Corporate, to take Care of the Goods, Repairs, and Ornaments of the Church; but this Work of *Preſenting* hath been devolved on them, and their Aſſiſtants, by Canons and Conſtitutions of a more modern Date.

Q. What was the antient Way of Preſenting?

A. To

A. To ſelect a Number, at the Diſcretion of the Ordinary, to give Information, upon Oath, concerning the Manners of the People within their Diſtrict; which Number was ſelected while the Synod was ſitting, and the People, as well as Clergy, in Attendance there.

Q. What Method ſucceeded this?

A. In Proceſs of Time it was changed, and it was directed in the Citation, that Four, Six, or Eight, according to the Proportion of the Diſtrict, ſhould appear together with the Clergy, to repreſent the People; and to be the *Teſtes Synodales*, as the Canon Law elſewhere ſtiles them.

Q. When did Churchwardens begin to Preſent?

A. A little before the Reformation, either by themſelves or elſe with two or three more *Parochiani fide digni* joined with them, and this laſt, by the Way, is evidently the Original of that Office, which our Canons call the Office of *Sideſmen* or Aſſiſtants.

Q. When was this made a Part of their Office by the Canon?

A. After the Preſentments of Church-wardens had gone on for many Years upon the Foot of Practice, at length their Office in this Particular was inforced by an expreſs Canon in the Year 1571, and has ever ſince continued ſo.

Q. Are Churchwardens bound by their Oaths to preſent all ſuch Things as are contained

tained in the Books of Articles of Viſitation?

A. * The Articles are offered only by way of *Direction* and *Charge*; and by the Tenor of their Oath, the Eccleſiaſtical Laws, and not the Articles, are become the legal Rule and Meaſure of their Duty. For they are ſworn to preſent ſuch Things only, as, to their Knowledge, are preſentable by the Eccleſiaſtical Laws of this Realm.

Q. What Perſons and Crimes are expreſly required to be preſented by the Canons?

A. All who offend their Brethren, either by Adultery, Whoredom, Inceſt, or Drunkenneſs, or by Swearing, Ribaldry, Uſury, or any other Uncleanneſs and Wickedneſs of Life. *Can.* 109. Alſo Schiſmaticks, Diſturbers of Divine Service, and Popiſh Recuſants. *Vide Can.* 110, 111, 114.

Q. Can Detections and Preſentments be made by *Word of Mouth?*

A. Though Preſentments are by the 119th Canon required to be made at *Home*, yet there is no doubt but every Viſitor hath a Right of *Perſonal Examination* as oft as he finds Occaſion for it; agreeably to the antient Practice.

Q. How often are Churchwardens bound to preſent?

A. Not above once in every Year where it hath been no oftner uſed, nor above twice in any Dioceſe whatever, except it be at the Biſhop's Viſitation; but the *Miniſter* and they

may preſent as often as they think meet. *Can.* 116.

Q. If Churchwardens, in Breach of their Oaths, wilfully refuſe to preſent notorious Offenders --- ?

A. They are not to be admitted to the Communion; and upon Proof, in Caſes of wilful Omiſſion, their Ordinaries ſhall proceed againſt them in ſuch ſort, as in Caſes of wilful Perjury in the Eccleſiaſtical Court. *Can.* 117.

Q. Can any one be cited into ſeveral Courts for one and the ſame Crime, as into the Biſhop's Court and the Archdeacon's, when they viſit in the ſame Year?

A. No; the Preſentment made to the Chancellor ſhall be certified to the Archdeacon, and the Preſentment to the Archdeacon ſhall be certified to the Chancellor; and neither ſhall intermeddle with the Crimes, or Perſons, detected and preſented in each other's Viſitation, upon Pain of Suſpenſion, until he repay the Coſts and Expences which the Parties grieved have been at by that Vexation. *Can.* 121.

Q. If the Churchwardens refuſe to Preſent, may the Miniſter Preſent *ſeparately*?

A. Yes; but he ſhall not preſent Sins revealed to him in Confeſſion, nor make thoſe Sins known to any Perſons whatever, (except ſuch, the Concealment whereof is Capital) under Pain of Irregularity. *Can.* 113.

Q. May Churchwardens preſent upon common Fame?

A. They

A. They are ſworn, and the Miniſter charged to preſent, as well the Crimes and Diſorders committed by criminous Perſons, as alſo the common Fame which is ſpread abroad of them. *Can.* 115.

Q. May they not bring themſelves into Trouble, and have Actions brought againſt them, for *falſe* and malicious Preſentments by this Means?

A. The Rules both of Charity and Government do preſume, that they do nothing herein of Malice, but for the Diſcharge of their Conſciences; and therefore all Judges Eccleſiaſtical and Temporal are admoniſhed and exhorted, by the Canon, not to admit of any Complaint or Plea againſt them, for any Preſentment they ſhall make.

Q. What is a Parochial Viſitation?

A. When the Archdeacon viſits every Pariſh ſeverally.

Q. How often is he obliged to do this?

A. Every Dean, Dean and Chapter, Archdeacon, and others who have Authority to hold Eccleſiaſtical Viſitations, by Compoſition, Law, or Preſcription, ſhall ſurvey the Churches of his or their Juriſdiction, in his own proper Perſon, or cauſe the ſame to be done once in every three Years. *Can.* 86.

Q. As Archdeacons, in their original Inſtitution, had no Relation to the *Dioceſe*, but only to the *Epiſcopal See*, without any thing that could be called Juriſdiction, in the preſent Senſe of the Word, either *in* the Cathe-

dral, or *out* of it, by what Steps and Degrees did they attain to the Viſitatorial Power they now enjoy?

A. From the latter End of the third Century, till the Council of *Laodicea*, *Anno* 360, the *Chorepiſcopi* had the Inſpection, under the Biſhop, of the Clergy in the Country, and of thoſe Parts of the Dioceſe which were remote from the Epiſcopal See; but it was then ordained, that no Biſhop ſhould be placed in Country Villages, but only περιοδευται, Itinerant or Viſiting Presbyters: But the Archdeacon being always *near* the Biſhop, and the Perſon mainly intruſted by him, grew into great Credit and Power, and came by Degrees, as Occaſion required, to be employ'd by him in viſiting the Clergy of the Dioceſe, and in Diſpatch of other Matters relating to the Epiſcopal Care; ſo that by the Beginning of the Seventh Century, he ſeems to have been fully poſſeſſed of the chief Care and Inſpection of the Dioceſe, in Subordination to the Biſhop.

Q. In the ſame Degree of Power as he now is ---?

A. No. This is to be underſtood with a two-fold Diſtinction from the preſent State and Meaſure of the Archidiaconal Power: For, 1. He was employ'd generally throughout the Dioceſe, at the Pleaſure of the Biſhop. 2. That the Power of Archdeacons, in the antient State, was chiefly a Power of *Enquiry* and *Inſpection*.

Q. How then do all the Rights which Archdeacons enjoy beyond this ſubſiſt?

A. By Grants from the Biſhops: Either made voluntarily, to enable Archdeacons to viſit with greater Authority; or of Neceſſity, as claimed and inſiſted upon by Archdeacons, upon the Foot of long Uſage and Cuſtom.

Q. What Juriſdiction is it that the Archdeacon enjoys in Virtue of ſuch Grants, and of Inſtitution to the Office they are annexed to?

A. The Juriſdiction he enjoys, is not only in the Eye of the Law *Ordinary Juriſdiction*, as being, in Reality, a Branch of Epiſcopal Power, but he himſelf is properly *Ordinarius*.

Q. When begun the Diviſions of Dioceſes into Archdeaconries, and the Aſſignment of particular Diviſions to particular Archdeaconries?

A. This is ſuppoſed to have begun a little after the *Norman* Conqueſt; when the Biſhops, as having Baronies, and being tied to a ſtricter Attendance upon the Kings in their Great Councils, were obliged to larger Delegations of Power, for the Adminiſtration of their Dioceſes, than till that Time had been accuſtom'd: For in the Charter of *William the Conqueror*, for appointing the Cognizance of Eccleſiaſtical Cauſes in a diſtinct Place or Court from the Temporal, the Archdeacon is mentioned in his general State, as *Vicarius Epiſcopi. Nullus Epiſcopus vel Archidiaconus de Legibus Epiſcopalibus amplius in Hundret placita teneant.* And

as this Charter did establish what we call *the Consistory Court* of the Bishop in every Diocese, so did it enable the Bishop by Degrees to assign to particular Persons what Share of Episcopal Authority he thought fit, to be exercised Archidiaconally within the Districts by him appointed; and as this Exercise, by long Usage, grew into a Claim, so those Claims, stifly maintained on the Part of Archdeacons, ended in Composition.

Q. What was the Consequence of this Assignment of particular Powers to particular Persons within their proper Districts?

A. It put an End to the general Capacity of Archdeacons, as Vicars General, throughout the whole Diocese; and made way for those Officers, who are known in our Provincial Councils, and the Glosses upon them, by the Names of *Vicar-General*, *Official*, and *Chancellor* to the Bishop: And who are vested with a delegated Power to exercise, in the Place of the Bishop, all such Jurisdiction as hath not been granted away to others, or that he hath not in the Commission reserved to himself.

Q. Does there lie any Appeal from the Archdeacon's Court?

A. Yes, to the *Consistory* Court, which is the Bishop's.

Q. Does a *Quare Impedit* lie for an Archdeaconry?

A. Yes, tho' it is but a Function, because he hath *Locum in Choro.*

Q. What

Q. What is the Archdeacon's Buſineſs in his Parochial Viſitations?

A. To ſee that Churches, Chancels, and Parſonage-Houſes are in Repair, and to enjoin them where they are wanting; to ſee that they have due Ornaments, Books, and Veſtments, and to puniſh what is amiſs in Things and Perſons.

Q. What is the Signification of the Word *Dean*?

A. The Name of *Dean*, to what kind of Office ſoever it hath been applied, was originally impoſed from a Preſidency over *Ten*, whether Perſons or Places.

Q. How many Sorts of Deans are there?

A. Cathedral and Rural.

Q. What is a Rural Dean?

A. One who preſides *over ten Clerks or Pariſhes.*

Q. Is the Diſtrict of a Rural Dean exactly confined to this Number?

A. As in the State, by the antient Law every Hundred was at firſt divided into ten Tithings or *Friborgs*, and every Tithing made up of ten Families; both which kept the Original Names, notwithſtanding the Increaſe of Villages and People: So in the Church, the *Deanry* ſtill continued, notwithſtanding the Increaſe of Perſons and Churches; tho' ſome do ſtill retain the primitive Allotment of *ten* Churches, and no more.

Q. Of what Antiquity is the Office of a Rural Dean?

A. 'Tis mentioned in the Laws of *Edward the Confeſſor*, as an Office of Antiquity, at that Time, under the Name of *Decanus Epiſcopi*; which ſhews, he was appointed by the Biſhop to have the Inſpection of the Clergy and People, within the Diſtrict in which he was Incumbent, *under him*, and *him alone*; till after the Archdeacon became a Sharer in the Epiſcopal Juriſdiction, he became of Courſe a Sharer in the Appointment of rural Deans.

Q. Is the Office of Rural Deans Temporary or Perpetual?

A. It hath always been of a Temporary Nature; and in the *Reformatio Legum* the Rule is, *Munus erit annuum:* But in the Dioceſe of *Norwich* the Admiſſion of Rural Deans ſeems to have been more ſolemn, and their Continuance perpetual.

Q. What was the ſtanding Office of a rural Dean?

A. To Inſpect the Lives and Manners of the People and Clergy within their Diſtrict, to determine leſſer Matters themſelves, and to report the reſt to their Eccleſiaſtical Superior: They were alſo ſometimes employ'd in other Branches of Power, ſuch as Citations, Inductions, Inquiſitions on *Jure Patronatus*, Cuſtody of vacant Benefices, Trial of Cauſes by Delegation, and the like; but in theſe only *occaſionally*, by their Eccleſiaſtical Superiors, to whom they ſwore Obedience at their Admiſſion.

Q. How were Rural Deans enabled to anſwer the Deſign of their Inſtitution by a perfect Knowledge of the State and Condition of their reſpective Deanries?

A. They had Power to convene *Rural Chapters*, which were held from three Weeks to three Weeks, and Quarterly, (in Imitation of Courts Baron here in *England*) in which they preſided; till the Archdeacons, being required by *Otho* to be frequently preſent at them, did in Effect take the Preſidency out of their Hands: From which Conſtitution we may date the Decay of *Rural Chapters*; not only as it was a Diſcouragement to the Rural Dean, whoſe peculiar Care the holding them had been, but alſo as it was natural for the Archdeacon and his Official to draw the Buſineſs that had been tranſacted there to their own Viſitation, or, as it is ſtiled in a Conſtitution of Archbiſhop *Stephen*, to their *own Chapter*.

Q. What is a Procuration?

A. A Payment due of common Right to the Eccleſiaſtical Ordinary, *ratione Viſitationis*; ſo called, *quia Eccleſiæ Epiſcopum* procurant, *i. e. curant, alunt, ac tuentur.*

Q. Are free Chapels and Donatives bound to pay Procurations?

A. No, becauſe they are not viſitable by any.

Q. Can Procuration be due without actual Viſitation?

A. Some deny it, and *build* their own Opinion upon the expreſs Letter, both of the antient

antient Canon Law, and our own Provincial Conſtitutions, which limit the Payment, whether in Proviſions or Money, to *actual Viſitation*, and warrant the Denial of them when no Viſitation is held; but others, with more Reaſon, as the Caſe now ſtands, maintain the Affirmative: For Archdeaconries are rated in the King's Books, and pay Tenths; and the Law could never intend the Payment of the tenth Part, if there had been any Year in which the Archdeacon was not to receive the nine Parts: And therefore it ſeems reaſonable, that if they are *inhibited* from viſiting in the Biſhop's Triennial, they have yet a Right to require Procuration for that Year; and if they *wilfully* neglect their Duty, they are liable to be puniſhed with ſpiritual Cenſures, by their ſpiritual Superiors, the Archbiſhops and Biſhops.

Q. What Procurations ſhall Churches newly erected pay?

A. According to the Proportion paid by the Neighbouring Churches.

Q. What are Synodals? and to whom are they due?

A. A Synodal is in all Probability the ſame that was antiently called *Cathedraticum*, as paid by the Parochial Clergy, in Honour to the Epiſcopal Chair, and in Token of Subjection and Obedience thereto; and the Name is ſuppoſed to have grown from that Duty's being uſually paid by the Clergy, when they attended the Biſhop in Synod: And they are therefore of common Right due to the Biſhop only; but

but may be claimed by the Archdeacon or other Perſon, upon the Foot of Compoſition and Preſcription.

Q. What was the Original of that Payment?

A. It was reſerved by the Biſhop, upon ſettling the Revenues of the reſpective Churches upon the Incumbents; whereas before, thoſe Revenues were paid to the Biſhop, who had a Right to Part of them for his own Uſe, and a Right to apply and diſtribute the reſt, to ſuch Uſes, and in ſuch Proportions, as the Laws of the Church directed.

Q. What are *Pentecoſtals?*

A. Oblations made by the Inhabitants of every Dioceſe to the Cathedral, as the Mother-Church of the whole Dioceſe, at the Feaſt of *Pentecoſt*; in like manner as the Inhabitants of *Chapelries* were bound, on ſome certain Feſtival, to repair to the Mother-Church, and make their Oblations there, in Token of Subjection and Dependance.

Q. Are Procurations, *&c.* being denied where due, to be recovered in the Temporal or Spiritual Court?

A. * In the Spiritual Court, being Profits of a meer Spiritual Nature.

Q. Are all Places ſubject to Ordinary Juriſdiction?

A. No, ſome are *totally* exempt; others but in *part*, being exempt from the Juriſdiction of *this* or *that* Ordinary, but not of *all*: And theſe are commonly called *Peculiars*.

Q. What

Q. What Places are they which are totally exempt?

A. Such as enjoy their Exemption upon the Foot of Common Law, as *Free Chapels* and *Donatives*; (the first visitable only by Commission from the King, and the second by Commission from the Donor:) or such as the Crown may have exempted, pursuant to the Power granted by *Stat.* 31 *Hen.* VIII. upon the Dissolution of the Monasteries; which Statute vests a Power in the King to subject any of those Religious Houses which were heretofore exempt by Grant from *Rome*, to such Jurisdiction as he should appoint.

Q. Are not they, who pretend Exemption upon this Foot, obliged to submit the Evidences of their Exemption, to the Ordinary in like manner as the Religious were?

A. Without it, it is impossible for him to know how far his Authority extends.

Q. Of how many Sorts are Peculiars?

A. Of several. 1. Peculiars of the Archbishop, exclusive of the Bishops and Archdeacons. 2. Peculiars of Bishops, exclusive of Archidiaconal Jurisdiction. 3. Peculiars of Deans, Deans and Chapters, Prebendaries, *&c.*

Q. Whence sprung the Peculiars of Archbishops?

A. From a Privilege they had to enjoy Jurisdiction, in such Places where their Seats and Possessions were.

Q. How many of these Peculiars are there in the Province of *Canterbury*?

A. Above

A. Above an Hundred, in the ſeveral Dioceſes of *London*, *Wincheſter*, *Rocheſter*, *Lincoln*, *Norwich*, *Oxford*, and *Chicheſter*.

Q. How is Juriſdiction adminiſtred in theſe Peculiars?

A. By ſeveral Commiſſioners, the Chief of whom is the Dean of the Arches; ſo called from his having always held his Courts in *Bow Church*, or *Eccleſia S. Mariæ de Arcubus*, for the thirteen Peculiars within the City of *London*.

Q. Does not the Juriſdiction of the Dean of the Arches extend beyond theſe thirteen Peculiars?

A. Not as ſuch, becauſe it belongs to the *Principal Official* of the Archbiſhop to receive Appeals throughout the Province; and that theſe two Offices are at any Time joined in the ſame Perſon is accidental, and depends wholly upon the Pleaſure of the Archbiſhop.

Q. Whence ſprung Peculiars of Biſhops?

A. Either from their having belonged to Religious Houſes, which were never under Archidiaconal Juriſdiction, or from ſpecial Reſervation.

Q. How were Peculiars of Deans, Deans and Chapters, Prebendaries, *&c.* firſt obtained and ſettled?

A. By Grants of the Biſhops; probably becauſe the Poſſeſſions of the reſpective Corporations, whether ſole or aggregate, lay chiefly in thoſe Places.

TIT. XLIII.

OFFICES *and* OFFICERS *belonging to the* SPIRITUAL COURT.

Q. WHAT Penalty is there upon buying and ſelling of Offices?

A. By 5 *Ed.* VI. *c.* 16. 'tis enacted, That if any Perſon ſell any Office or Offices, or receive or covenant to receive Money or Reward, or Bond or Aſſurance thereof, for any Office, or Deputation of Office, directly or indirectly, (Offices of Inheritance, and ſome others excepted) in anywiſe concerning the Adminiſtration or Execution of Juſtice, *&c.* he ſhall not only loſe all his Right and Intereſt in the Gift or Nomination of ſuch Office for that Time, but the Perſon purchaſing, *&c.* ſhall be diſabled in Law to enjoy it.

Q. Are Offices in the Eccleſiaſtical Courts, *viz.* thoſe of Chancellor, Commiſſary, and Regiſter, within this Statute?

A. * Tho' they principally concern Matters *pro Salute Animarum*, yet they alſo concern Matters about Matrimony and Legitimation, which touch the Inheritance of Subjects: And alſo Matters of Legacy, for Chattels real and perſonal; and in that reſpect are *Courts of Juſtice*, and within this Statute.

Q. Is the Perſon diſabled utterly to take the ſame Office, altho' it afterwards become vacant, and a new Grant be made to him of it.

A. It

A. * It was ſo reſolved by Chancellor *Egerton* and Chief Juſtice *Coke*, and that it is ſuch a Diſability as the King himſelf cannot diſpenſe with.

Q. Who has the Right of diſpoſing of the Office upon ſuch Forfeiture?

A. * It belongs to the Crown.

Q. What Reſtraints are there upon Biſhops in granting ſuch Offices?

A. No Offices of any Kind are grantable by Biſhops, or other Eccleſiaſtical Perſons, as ſuch, in any *larger Extent*, than they ſhall appear to have been granted *before* 1 Eliz. c. 19. *and* 13 Eliz. c. 10. And * it hath been declared, That Grants of Offices, being made *for more Lives* than they had been made for before thoſe Statutes, or being made in *Reverſion*, when before thoſe Statutes they had not been made in Reverſion, are both void.

Q. What are the Qualifications required in a ſpiritual Judge?

A. Formerly they were obliged to be in Orders, and ſingle; but now Lay and Married Men are qualified, provided that every Judge Eccleſiaſtical, Chancellor, Commiſſary and Official, muſt be full Six and twenty at the leaſt, learned in the Civil and Eccleſiaſtical Laws, Maſter of Arts, or Batchelor of Law, and reaſonably well practiſed in the Courſe thereof, and of good Life and Behaviour. *Can.* 127.

Q. What Oaths are required of him before the Execution of his Office?

A. He

A. He muſt take the Oath of Supremacy, and ſubſcribe the XXXIX Articles; he ſhall alſo ſwear, that he will, to the uttermoſt of his Underſtanding, deal uprightly and juſtly in his Office, without Reſpect, or Favour, or Reward; the ſaid Oaths and Subſcription to be recorded by a Regiſter then preſent: All Eccleſiaſtical Officers ſhall take the ſame Oaths, upon Pain of Suſpenſion. *Ibid.*

Q. What are the Eccleſiaſtical Courts?

A. Eccleſiaſtical Courts, (*Curiæ Chriſtianitatis*, Courts Chriſtian, or the Spiritual Courts,) are thoſe which are held by the King's Authority, as Supreme Governor of the Church, for Matters which chiefly concern Religion. Other Cauſes are given to them by the Favour of Princes. *Vide* the *Introduction.*

Q. Who are the Judges in theſe Courts?

A. Archbiſhops, Biſhops, ſome Deans and Chapters, Archdeacons, and ſome Prebendaries, (or Vicar-Generals, Chancellors, Commiſſaries, and Officials appointed by them) and the Proceedings are in their Names, tho' they are the King's Courts.

Q. In what Matters and Things does the Eccleſiaſtical Juriſdiction conſiſt?

A. In viſiting Churches, the Clergy, and Churchwardens of ſeveral Pariſhes or Diſtricts; in granting Sequeſtrations, Inſtitution and Induction to Benefices, Licenſes and Diſpenſations; ordering Real Compoſitions, granting Probates of Wills, Letters of Adminiſtration, Letters *ad Colligendum*, *&c.* In hearing and de-

determining the following Cauſes, *viz.* Apoſtacy, Blaſphemy, Idolatry, Hereſy, Schiſm, Breach of Faith, or Perjury in an Eccleſiaſtical Cauſe, Profanation of the Lord's Day, and Holidays, not frequenting Publick Prayers, Neglect of Sacraments, Neglect of Duty in Miniſters, Diſturbance of Divine Service, laying violent Hands upon a Clerk, providing Books and decent Ornaments for the Celebration of Divine Service, Rites of Matrimony, Jactitation of Marriage, Divorces, Alimony, Reſtitution of Conjugal Rights, General Baſtardy, Subſtraction of Tithes, or of a *Modus Decimandi*, Oblations, Obventions, Mortuaries, Penſions, Synodals, Procurations, Dilapidations, Rights to Seats in the Church, or to a Place in a Seat, Reparation of Churches and Publick Chapels, and of Church-yards and Rates, and Accounts of ſuch Repairs, Quarrelling or Fighting in a Church or Church-yard; alſo the Bounds of Church-yards, and the Bounds of Pariſhes, if they come in Queſtion in a Spiritual Matter (*Qu.*) Teſtaments and Codicils proved by Witneſſes, Legacies, Adminiſtrations, Suits concerning Inventories, and Accounts of Executors or Adminiſtrators, Simony, Inceſt, Adultery, Fornication, or violent Suſpicion, or Fame thereof, Sollicitation of Chaſtity, Defamations in charging with Offences meerly Spiritual, common Swearers and Drunkards, filthy Talkers, Money upon Commutation of Penance, Fees of Judges, Advocates, Proctors, Regiſters,

Apparitors, *&c.* Wages for a Curate or a Pariſh Clerk (*Qu.*) Rights of naming a Churchwarden, a Pariſh Clerk, *&c.*

Q. By what Laws and Conſtitutions is the Church of *England* governed?

A. By the Canon Law, Common Law, and Statute Law. *Vide* the *Introduction.*

Q. What is the Nature and Extent of the Power of Chancellors, as the Name is underſtood at preſent?

A. A Chancellor, being the Biſhop's Subſtitute, and having Ordinary Power by Delegation, hath the ſame Court with the Biſhop, ſo that the legal Acts of the Court, are the Biſhop's Acts, by whoſe Authority he ſits there; ſo that no Appeal lies from the Biſhop's Officer to himſelf, but to the Superior; and as to the Bounds of a Chancellor's Power, as to Acts of *voluntary* Juriſdiction, the Law no where determines them, nor can it be ſuppoſed ſo to do, ſince it is but a delegated Power, and it is in the Right of him that deputes, to circumſcribe and limit it: The *Contentious* Juriſdiction is conveyed to him *virtute Officii*, (ſo that the Biſhop may well ſue for a Penſion or other Rights before his own Chancellor) and it is generally ſaid, That if a Biſhop doth not conſtitute a Chancellor, the Archbiſhop of the Province may oblige him to it.

Q. Have Ordinaries Authority to correct and puniſh their own Officers?

A. Our Eccleſiaſtical Laws evidently ſuppoſe a judicial Authority remaining in Ordinaries, for the Correction and Puniſhment of their own Officers, however conſtituted by Patent, inaſmuch as the Chancellors, for divers Crimes, ſhall be ſuſpended by their Biſhops (* as for Divorces unduly made, for not preſenting Recuſants, for not certifying Preſentments at Viſitations) and it may be taken for granted, that the Parties concerned will not allow the Power of Suſpenſion, in theſe and the like Caſes, without legal Proceſs.

Q. What is a Commiſſary?

A. Officialis foraneus ---- qui in certa parte Diœceſeos vel ad certos actus conſtituitur, viz. In ſuch Places, and for ſuch Acts, as by reaſon of Diſtance, *&c.* are inconvenient for the chief Conſiſtory: But beſides theſe, all Perſons adminiſtring *peculiar* Juriſdiction of any kind, are alſo comprehended under the Name of *Commiſſaries*, by way of Diſtinction from the Chancellors, who, *under the Biſhop*, have the Exerciſe of Ordinary Juriſdiction.

Q. What is an *Official?*

A. This Name, however belonging to Chancellors and Commiſſaries, as thoſe who hear and determine Cauſes Eccleſiaſtical, in the Name of the Biſhop, doth, in common Speech, denote only the Perſon who exerciſes that Power by Commiſſion from the *Archdeacon*, to whom he ſtands in the like Relation, that the Chancellor doth to the Biſhop.

Q. What Care is taken by the Eccleſiaſtical Conſtitutions not to encourage Contention between Parties?

A. * No Eccleſiaſtical Judge ſhall take any thing for Arbitration, when Parties have a Mind to agree, nor hinder their Agreement, nor take any thing for ſo doing, upon Pain of reſtoring it to him who gave it; and as much to the Poor, upon Pain of Excommunication.

Q. What is a *Surrogate*?

A. A Perſon ſubſtituted by the Chancellor, Commiſſary, Archdeacon's Official, or any other Perſon uſing Eccleſiaſtical Juriſdiction, in their Abſence, to keep Courts for them, or to exerciſe other Acts of their Juriſdiction, as granting Licences, *Probate*, *&c.*

Q. What Qualifications are required in a *Surrogate*?

A. He muſt be either a grave Miniſter, and a Graduate, or a licenſed publick Preacher, and a Beneficed Man near the Place where the Courts are kept, or a Batchelor of Law, or Maſter of Arts at leaſt, who hath ſome Skill in the Civil and Eccleſiaſtical Law; a Favourer of true Religion, and a Man of modeſt and honeſt Converſation, upon Pain that the Judge and Surrogate ſhall be ſuſpended for three Months. *Can.* 128.

Q. What Qualifications are required in an Advocate, in order to his Admiſſion?

A. By a Conſtitution of Archbiſhop *Pecham*, none ſhall be Advocate till he hath

heard Canon and Civil Law three Years at leaſt, and by a Conſtitution of *Otho*, ſhall take an Oath to be faithful to his Client, and ſhall not be guilty of indirect Practices.

Q. What Authority muſt a *Proctor* have?

A. He muſt be conſtituted and appointed by the Party himſelf, whoſe Proctor he is, either before the Judge, and by Act in Court, or in the Beginning of the Suit, by a true and ſufficient Proxy thereunto warranted and enabled. *Can.* 129.

Q. What do you call a ſufficient Proxy?

A. That which is ſtrengthned and confirmed by ſome authentick Seal; the Party's Approbation, or at leaſt his Ratification therewithal concurring.

Q. Can a Proctor retain a Cauſe in any of the Archbiſhop's Courts without the Advice of an Advocate?

A. Not for two Court-Days, upon Pain of Suſpenſion for a Year. For the Duty and Behaviour of Proctors, ſee *Canon* 131, 133.

Q. What is the Duty of a *Regiſter*, and what Penalty upon the Neglect of it?

A. No judicial Act whatever ſhall be ſped without the Preſence of the Regiſter, or his lawful Deputy, or ſuch Perſons as are by Law allowed on that Behalf to write and ſpeed the ſame. And if any Regiſter, or his Deputy, ſhall receive any Certificate without the Knowledge and Conſent of the Judge, or willingly omit to cauſe any Perſon cited to appear upon any Court-Day, to be called, or unduly put

off, and to defer the Examination of Witneſſes to be examined by a Day ſet and aſſigned by the Judge, or do not obey --- or behave himſelf negligently, undutifully, or partially in his Office, he ſhall be ſuſpended by the Biſhop for the Space of one, two, three, or more Months, according to the Quality of his Offence. *Vide Canon* 134.

Q. Are Apparitors obliged to execute their Office in Perſon?

A. Yes, unleſs upon good Cauſe to be approved by the Ordinary?

Q. May Apparitors take upon them the Office of Promoters or Informers for the Court?

A. They are expreſly forbid to do ſo by the Canon. Of their Number and Duty ſee *Canon* 138.

Q. If an Apparitor return one cited upon his Oath in Court Chriſtian, where in Truth he was not cited, and the Party thereupon is pronounced *Contumax* and Excommunicated ---?

A. * He ſhall have an Action upon the Caſe againſt the Apparitor, becauſe here is *Injuria & Damnum*, and although the Proceeding and Oath be Eccleſiaſtical, yet the Damage is Temporal; for he is diſabled to ſue in any Court.

Q. Will an Action upon the Caſe lie againſt an Apparitor for maliciouſly procuring one to be cited into the Court for any Crime, as

as Incontinency, *&c.* where the Party is afterward cleared?

A. Yes, in the 8th of *Charles* I. * ſuch an Action was brought, and it being found that what the Apparitor did, was *falſo & malitioſe*, the Court held that the Action did well lie.

TIT. XLIV.

SPIRITUAL COURTS, *and Proceedings therein.*

Q. WHERE and when is the Spiritual Court to be held?

A. 'Till the Reign of *William* the Conqueror, the Court for Eccleſiaſtical and Temporal Matters was the ſame; namely, the *County-Court*; where the Biſhop and Sheriff, or their Repreſentatives, ſat jointly, for the Adminiſtration of Juſtice, the firſt, in Matters Eccleſiaſtical, by the Laws of the Church; the ſecond, in Matters Temporal, by the Laws of the State. But this Mixture of Judges and Cauſes occaſioning great Confuſion, *William* the Conqueror ſeparated the Eccleſiaſtical from the Temporal Courts, by a Charter for that Purpoſe, (though that Separation was not fully eſtabliſhed for ſome Time after) by which Charter the Biſhop is to aſſign a convenient Place, and a convenient Time, any where within the Dioceſe.

Q. What are the Spiritual Courts in particular?

A. 1. The Archdeacon's Court. 2. The Conſiſtory Courts. 3. The Court of Peculiars † of the Archbiſhop of *Canterbury*. 4. The Prerogative Courts of the Archbiſhops of *Canterbury* and *York*. 5. The Court of Arches. 6. The Court of Delegates.

Q. What is the Archdeacon's Court?

A. The Court of the Archdeacon is the moſt inferior Court, and is held in ſuch Places where the Archdeacon, either by Preſcription or Compoſition hath Juriſdiction in Spiritual or Eccleſiaſtical Cauſes within his Archdeaconry. The Judge of this Court is called the Official of the Archdeaconry.

Q. What are the Conſiſtory Courts?

A. The Courts of the Archbiſhops and Biſhops of every Dioceſe, held in their Cathedral Churches for Trial of all Eccleſiaſtical Cauſes within the Dioceſe. The Biſhop's Chancellor or Commiſſary is the Judge.

Q. Where is the Prerogative Court of the Archbiſhop of *Canterbury* held, and for what?

A. At *Doctors-Commons* in *London*; and in it all Teſtaments and laſt Wills are proved, and Adminiſtrations upon the Eſtates of Inteſtates granted, where the Party dies beyond Sea, or within his Province, leaving *Bona Notabilia*.

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† Other Peculiars are taken Notice of *pag.* 362.

Q. What

Q. What is the Court of Arches?

A. The Court of Arches (*Curia de Arcubus*) becauſe it was antiently held in *Bow-Church*, or in the Arched Church of St. *Mary* in *Cheapſide*, *London*) is that which hath Juriſdiction upon Appeal in all Eccleſiaſtical Cauſes, except what belong to the Prerogative Court: All manner of Apeals whatſoever from any Biſhops or their Chancellors, Commiſſaries, *&c.* being directed hither. Alſo all Appeals from the Commiſſaries of the Archbiſhop of *Canterbury*, are made to the Judge of the Court of Arches.

Q. Who is the *Judge of the Arches?*

A. The Perſon who adminiſters Juſtice under this Style, is the *Official Principal* of the Archbiſhop, who was called *Officialis de Arcubus*, and the Court it ſelf *Curia de Arcubus*, for the Reaſon above.

Q. Why was this Court held in *Bow-Church?*

A. By reaſon of the Archbiſhop's having *Ordinary Juriſdiction* in that Place, as the Chief of his Peculiars in *London*, and the Church where the Dean of thoſe Peculiars, commonly called the *Dean of the Arches*, held his Courts.

Q. Is the Juriſdiction of the Dean of the Arches limited to the thirteen Peculiars of the Archbiſhop in the City of *London?*

A. The Juriſdiction of the *Dean of the Arches*, as ſuch, reaches no further; but becauſe theſe two Courts were held in the ſame Place, and

and the *Dean of the Arches* was uſually ſubſtituted in the Abſence of the *Official Principal*, while the Offices remained in two Perſons, and the Offices themſelves have been in many Inſtances united in one and the ſame Perſon, *as they now remain*, this has given Occaſion to ſome to miſtake, that it is the *Dean of the Arches*, as ſuch, who hath Juriſdiction throughout the Province for receiving Appeals, *&c.* whereas in Truth this belongs to him only as *Official Principal.*

Q. Can the Judge of the Arches, or other ſuperiour Courts of the Archbiſhop, *cite* any Perſon out of the Dioceſe of another?

A. No, unleſs it be on an Appeal, or except the *Judge* be an Offender, or the immediate Judge dare not, or will not cite, or the Biſhop or Judge be Party, or at the Requeſt of the inferior Judge, where the Law Civil or Canon doth affirm the Execution of ſuch Requeſt to be lawful or tolerable, 23 *H.* VIII. *c.* 9. or laſtly, except where the Prerogative Court cites for the Probate of Teſtaments.

Q. What Penalty is there upon any Judge offending againſt this Act?

A. He ſhall forfeit double Damages and Coſts to the Party grieved, and alſo ten Pounds, to the King half, the other Half to any Perſon that will ſue for it.

Q. Was there not alſo formerly a Court of *Audience?*

A. This Court was antiently held before the Archbiſhop in Perſon, with Auditors, by way

way of Aſſiſtants only; afterwards it was held by the Authority of the Archbiſhop in the Conſiſtory Court within the Cathedral Church of St. *Paul*, by a Judge whoſe Stile was, *Curiæ Audientiæ Cantuarienſis Cauſarum & Negotiorum Auditor*, and who had the *ſelf-ſame* Juriſdiction with the Official of the Arches. For which Reaſon the Court of Audience, or at leaſt the Appointment of particular Judges or Auditors for the Adminiſtration thereof, hath been long diſuſed; The Offices of Principal Official of the Arches and Audience being united in one Perſon.

Q. What is the Court of Delegates?

A. The Court of Delegates is ſo called becauſe the Judges are Delegated, and ſit by Force of the King's Commiſſion under the Great Seal *pro hac vice*, upon Appeals to the King in theſe Caſes, *viz.* when a Decree or Sentence is given in any Eccleſiaſtical Cauſe by the Archbiſhops or their Judges: When any Decree or Sentence is given in any Eccleſiaſtical Cauſe in Places exempt, or Peculiars belonging to the King: Upon Appeals from *Ireland*, or either of the Univerſities: And laſtly, when a Sentence is given in the Court of Admiralty; except in the Caſe of Prizes, where the Appeal lies to the Lords of the Council.

Q. What is the Courſe of Proceeding in the Eccleſiaſtical Courts?

A. The Eccleſiaſtical Courts proceed according to the Courſe of the Civil and Canon Laws

Laws. By *Citation*, *Libel* or Articles, Anſwer upon Oath, Proof by Witneſſes and Preſumptions, *Definitive Sentence* without a Jury, and after that, for Contempt of Sentence, by *Excommunication*; and if the Sentence is diſliked *by Appeal*. In *criminal* Cauſes the Proceedings of the Eccleſiaſtical Courts are by Inquiſition, or *ex Officio mero*; or by Accuſation, or *ex Officio promoto*; or by Denunciation or Preſentment of Church-wardens in Viſitations, *&c.*

Q. What is a Libel?

A. A Declaration or Charge, drawn up in Writing on the Part of the Plaintiff or *Actor*, to which the Defendant or *Reus* is obliged to anſwer.

Q. May the Defendant demand a Copy of the Libel in order to give Anſwer thereunto, or in order to a Prohibition?

A. Yes, where the Cauſe is between Party and Party; and ſome think alſo, that when the Judge proceeds *ex Officio*, a Copy ought to be delivered, as well on Articles and Preſentment, as on other Libels, and that the reading the Preſentment to the Party is not ſufficient; but * Judgments upon this Caſe have frequently varied.

Q. What if the Libel is not delivered —?

A. A Writ or Mandate is provided, concerning which *Fitzherbert* ſays, *Nat. Br.* 43. *If a Man be ſued in the* Spiritual *Court, and the Judges there will not grant to the Defendant a Copy of the Libel, then ſhall he have a Prohibition directed unto them for to ſurceaſe,* &c.

&c. *until they have delivered a Copy of the Libel*; * which Prohibition the more modern Books have put under theſe two Limitations; 1. That before Prohibition is granted, an Oath ſhall be required of the Denial of the Libel: And, 2. That it ſhall not be granted at all if the Appeal is made for ſuch Denial (as for a *Gravamen*) from an Inferior to a Superior Court; becauſe the Party hath his Election, and hath choſen his Remedy. To the Remedy by way of Prohibition *Fitzherbert* adds, in the forementioned Place, That the Defendant may have an Action againſt them upon the Statute 2 *Hen.* V. *c.* 3. if they will not deliver the Copy of the Libel, whether the Cauſe in the Libel be a Spiritual Cauſe or not.

Q. Are *Interrogatories* within the Equity of this Statute?

A. * It hath been ſo reſolved, and that, when required, a Copy of them ought to be granted.

Q. Can the Spiritual Judge impoſe Fine or corporal Puniſhment?

A. No; only Cenſures *pro Salute Animæ*.

Q. Can he adminiſter the Oath *ex Officio*?

A. No, by 16 *Car.* I. *c.* 2. upon Pain to forfeit treble Damages to the Perſon grieved, and 100 *l.* to him who ſhall firſt ſue for the ſame, and to be diſabled for ever from being in any Office or Imployment, in any Court of Juſtice whatſoever.

Q. What is the *Oath ex Officio*?

A. An

A. An Oath whereby any Perſon may be obliged to make any Preſentment of any Crime or Offence, or to confeſs or accuſe himſelf, or herſelf, of any criminal Matter or Thing, whereby he or ſhe may be liable to any Cenſure, Pain, Penalty, or Puniſhment whatever.

Q. May not the Eccleſiaſtical Courts receive Anſwers upon Oath in other Caſes?

A. * Yes, where the Courſe hath been ſo to do, they may receive them ſtill, as the Chancery does in like Caſes.

Q. If Articles *ex Officio* are exhibited in the Spiritual Court for Matters *Criminal*, and the Party is required to Anſwer upon Oath --?

A. * He may plead *quod non tenetur reſpondere*, and if they will proceed notwithſtanding, he may have a Prohibition.

Q. But if it be in a *Civil* Matter ---?

A. He cannot do ſo, for then he is *bound* to Anſwer.

Q. What Difference is there in the Rules of the Temporal and Spiritual Courts, with regard to the *Number* of Witneſſes?

A. In the Spiritual Court they admit of no Proof but by *two* Witneſſes at leaſt; in the Temporal Court one Witneſs, in many Caſes, is judg'd ſufficient. If therefore the Point to be prov'd is meerly Spiritual, the Spiritual Court requires two Witneſſes, and they are not diſturbed by Prohibition: And the ſame has been held with regard to Points not otherwiſe cogniſable in the Spiritual Courts,

Courts, but as *Incidental* to the principal Point. * But the more Modern Reports ſpeak otherwiſe; that ſuch Proof which is good at the Common Law, ought to be allow'd in their Courts, where the Matter to be prov'd (which falls in incidentally in a Caſe before them in the Spiritual Court) is Temporal: They may follow their own Rules in Things which are originally in their Cogniſance, but if any *Collateral* Matter doth ariſe, as concerning a *Revocation of a Will*, or *Payment of a Legacy*, if the Proof be but by *one* Witneſs, they ought to allow it.

Q. How is Perjury puniſhable in a Spiritual Cauſe?

A. By the Spiritual Judge; If committed in a *Temporal* Cauſe, it is puniſhable only in the *Temporal* Courts. But tho' the Caſe is Spiritual, and the Perjury is committed in the Spiritual Court, yet the Judge there can only puniſh *pro ſalute animæ*, and the Party griev'd by ſuch Perjury, muſt recover his Damages at the Common Law.

Q. What Fees are due to Eccleſiaſtical Officers?

A. All Fees in Eccleſiaſtical Courts, ſhall be according to the Tables confirm'd and ratified by Archbiſhop *Whitgift*, *Anno*, 1597, and all Queſtions concerning the ſame ſhall be determin'd by the Archbiſhop for the Time being, except the Statutes of the Realm do expreſs ſome other Fee to be due.

Q. How is it to be known what Fees are due?

A. Every

A. Every Regiſter ſhall place two Tables containing the ſeveral Rates and Sums of all the ſaid Fees, one in the uſual Place, or Conſiſtory where the Court is kept, and the other in his Regiſtry: And both of them in ſuch ſort as every Man whom it concerneth, may, without Difficulty, come to View and Peruſal thereof, and take a Copy of them, upon Pain of Suſpenſion till he do it; and for concealing them, he ſhall be ſuſpended ſix Months. *Can.* 136.

Q. Where are Proctors Fees to be ſued for?

A. * In the Spiritual Courts.

Q. What Remedy is there for Extortion and Oppreſſion in the Spiritual Courts?

A. The Ordinaries and their Officers may be Indicted; but then they "muſt ſay and "put in certain, in what Thing, and of "what, and in what Manner the ſaid Or-"dinaries, or their Miniſters, have done Ex-"tortions and Oppreſſions," 25 *Edw.* III. *c.* 9. It ſhould be ſhew'd likewiſe, what is their due Fee, for if no Fee be due, the ſame ought to appear in the Indictment.

Q. What Stamps are requir'd in Citations and other Inſtruments in the Proceedings of the Spiritual Court?

A. Every Citation or Monition, Libel or Allegation, Depoſition, Anſwer, *final Decree, and Inventory*, (or Copies of them ingroſs'd,) a double Sixpenny.

Every Proteſt, Procuration, Letter of Attorney, or any other Notarial Act, double Sixpenny.

Every

Every Commiſſion iſſuing out of any Eccleſiaſtical Court Five Shilling.

Every Admiſſion of Advocate, Proctor, Notary, *&c.* treble Forty Shilling.

TIT. XLV.

Prohibitions, Appeals, Inhibitions.

Q. HOW are Spiritual Courts reſtrain'd?

A. By *Prohibition* and *Præmunire.*

Q. How are they reſtrained by *Præmunire?*

A. In the Statutes 27 *Ed.* III. *c.* 1. and 16 *Rich.* II. *c.* 5. (which, doubtleſs, were *principally* intended againſt Impeachments, in the Court of *Rome*, of ſuch Judgments as had been given in the King's Courts,) the Words being *General*, (as, in *any other* Court, at *Rome*, or *elſewhere*) have been interpreted to be a Reſtraint upon the ordinary Spiritual Courts of this Realm, from intermeddling in any Matters of a Temporal Nature; and that, if they do, they are ſubject to a *Præmunire.* Concerning which * my Lord *Cook* lays down Three Rules, by which it may be judged in what Caſes a *Præmunire* lies, and what not.

1. When the Cauſe *Originally* belongs to the Cogniſance of the Eccleſiaſtical Court, and the Suit is proſecuted there in the ſame Nature, as the Cogniſance belongs to them, (altho, in Truth, all Circumſtances diſcloſed,

it belongs to the King's Courts and the Common Law, yet no *Præmunire* lies but only *Prohibition*; as if Suit be for *Subſtraction of Tithes*, when, in Reality, they were ſever'd from the Nine Parts, and carried away; or for *Sylva Cædua*, under the Age of Twenty Years, whereas they were above that Age.

2. Altho' the Cauſe originally appertains to the Cogniſance of the Eccleſiaſtical Court; yet if it be ſued for in the Nature of a Suit which belongs to the Common Law, (as if a Perſon ſues for carrying away his Tithes, ſever'd from the Nine Parts, or for Tithes of Wood above Twenty Years Growth; in which, and the like Caſes, it is apparent to the Eccleſiaſtical Court by the Libel, that the Matters appertain to the Common Law) *Præmunire* lies.

3. Where the Cauſe originally belongs to the Cogniſance of the Common Law, and not to the Eccleſiaſtical Court; there, altho' they Libel for it according to the Courſe of the Eccleſiaſtical Law, yet the *Præmunire* lies; becauſe this draws the Caſe which is determinable at the Common Law, *ad aliud Examen, viz.* to be decided by the Civil or Eccleſiaſtical Law, and ſo deprives the Subject of the Benefit of the Common Law, which is his Birthright.

Q. Does it not ſeem a great Hardſhip, that Eccleſiaſtical Judges, in executing the Laws of the Church, ſhould lie under ſuch terrible Apprehenſion as that of *Præmunire?* Are there

there not other ways by which the Juriſdiction of the Temporal Court is ſecured?

A. Yes, by an Action upon the Caſe for ſuing in the Spiritual Court for a Temporal Matter; by *Prohibition* to the Court to ſtay ſuch Suit and Proceſs; and by Attachment and Fine, with Damages and Coſts to the Party aggriev'd, if they go on, notwithſtanding the *Prohibition*; and this is the Method uſually practiſed.

Q. What is Prohibition?

A. A Writ iſſuing out of the Chancery, King's Bench, or Common Pleas, to forbid a Judge in the Spiritual Courts, *&c.* to proceed in a Cauſe that belongs to the Common Law Courts, or that belongs not to their Juriſdiction, tho' the Courts at Law can give no Remedy.

Q. In what Caſes does Prohibition not lie?

A. * Prohibition lies not in Caſe of Penance Corporal or Pecuniary, injoin'd for deadly Sin; nor for Repair of Church-Yards or Churches, nor for Oblations, Tithes, Mortuaries, Penſions, laying violent Hands upon a Clerk, Defamation where Money is not demanded, nor for Breach of Faith; and in many Caſes before mentioned.

Q. May the *Defendant only* have Prohibition?

A. * The Plaintiff, as well as Defendant, in the Spiritual Court may have Prohibition *to ſtay his own Suit.*

Q. May a Prohibition be granted upon Suggeſtion of Matters not contained in the Libel?

A. † Yes: And this is call'd Prohibition upon a *collateral Surmiſe*; *as where one is ſued in the Spiritual Court for Tithes of* Sylva Cædua, *the Party may ſuggeſt, that they were groſs or great Trees, and have a Prohibition*; yet no ſuch Matter appeareth in the Libel: *So if one be ſued there for violent Hands laid on a Miniſter by an Officer, as a Conſtable, he may ſuggeſt, that the Plaintiff made an Affray upon another, and he, to preſerve the Peace laid Hands on him, and ſo have a Prohibition; and ſo in* very many other *like Caſes: And yet upon the Libel, no Matter appeareth why a Prohibition ſhould be granted.*

† This was the Anſwer of the Judges, upon a Complaint of Archbiſhop *Bancroft* in the third Year of King *James* the Firſt. That Prohibitions were granted without Sight of the Libel: Upon which Head 'tis natural to obſerve, that as there are few Caſes but what will afford ſuch *Collateral Surmiſes*; ſo, how falſe and groundleſs ſoever they be, there are too many Perſons who have Recourſe to them, on Purpoſe to tire an Adverſary, and delay Sentence in the Spiritual Court. And ſince theſe evil and indirect Ends may at any Time be compaſſed, if Suggeſtions of the Party's own *framing*, and which are not in the Libel, are to be liſtened to; ſince alſo in the Conſequence, this is ſuch an intolerable *Interruption* to the Spiritual Courts, it ſhould ſeem to be highly reaſonable, that in Default of proving ſuch Suggeſtions as appeared not in the Libel, effectual *Penalties* were provided to diſcourage the making of them; as it is in all Caſes of Tithes, by *Stat.* 2 *Edw.* VI. where not only Conſultation is granted upon Failure of Proof, but alſo, *double Coſts* and *Damages* to the Party injured.

Q. In

Q. In Caſe the *Principal* Matter belongs to the Cogniſance of the Spiritual Court, are all Matters *Incidental*, tho' otherwiſe of a *Temporal* Nature, cogniſable there alſo?

A. * Yes: But notwithſtanding this, tho' they may be proceeded on, in the Spiritual Court, when they are own'd by both Sides to be good and valid (as in the Caſe of Leaſes, Cuſtoms, and Preſcriptions) yet if the Validity of them comes in Queſtion, there they are immediately Prohibited.

Q. What is the Reaſon why Prohibition lies, * when the Iſſue of a Matter depending in the Spiritual Court, is determined or influenced by any *Statute?*

A. Becauſe the Temporal Judges claim a Right of *Interpreting* all Statutes equally, whether they concern Eccleſiaſtical or Temporal Matters.

Q. Is a Temporal Loſs enſuing upon a Spiritual Sentence, of itſelf Cauſe of Prohibition?

A. * No; otherwiſe no Crimes could be puniſhed in the Spiritual Court by Deprivation.

Q. Muſt the Suggeſtion be preciſely proved, in order to obtain a Prohibition?

A. * No: Nay it has been reſolv'd, that if, when a Libel in the Eccleſiaſtical Court contains many Articles, *any* of them do not belong to the Cogniſance of Court Chriſtian, a Prohibition may be *generally* granted, and upon Motion, a Conſultation may be granted, as

to Things which do belong to Spiritual Juriſdiction.

Q. May Prohibitions be granted on the laſt Day of the Term?

A. * No: But upon Motion on the laſt Day of the Term, there may be a Rule *to ſtay* Proceedings till the *next* Term.

Q. May Prohibition be had after Sentence and Execution?

A. * Yes; and that, as hath been held, whether any Appeal is depending or not.

Q. Does Prohibition take off Coſts aſſeſs'd upon an *Appeal*, where the Cauſe is return'd to the Inferior Court?

A. * It has been adjudged in this Caſe, that becauſe Prohibition ſtays all Proceedings, the Coſts are taken away; and further, that if the Party was Excommunicate, he ſhould be abſolv'd.

Q. What is a Conſultation?

A. A Writ to return a Cauſe, remov'd by Prohibition, to the Eccleſiaſtical Court, when the Judges find that *that* Court hath Juriſdiction, or that the Suggeſtion is falſe, or not prov'd, upon which the Prohibition was obtain'd.

Q. Why is it call'd a Conſultation?

A. * Becauſe the Court, *upon Conſultation* among them, ought to award it; and it is on Account of the great Deliberation to be beſtow'd on theſe Occaſions, and its being an *Award* of the Court, and *Final*, that no Conſultation can be granted, tho' by all the Judges,

out

out of Term, nor by any of them within the Term, *out of Court*.

Q. Is a ſecond Prohibition of Force, which is granted after Conſultation?

A. * Not if the Conſultation was *duly* granted; * that is, upon the *Subſtance* of the Suggeſtion being prov'd to be inſufficient in Verdict, or Non-ſuit after Evidence; and not where it is granted for the Inſufficiency of the *Form* of the Suggeſtion, or in the *Proceedings* thereupon. Provided alſo, that the Matter in the Libel be not engroſs'd, enlarged, or otherwiſe changed.

Q. Does the Infliction of Puniſhments, aſſign'd to any Vice or Immorality by Common Statute Law, for Temporal Ends, ſuperſede the Right which the Church hath to inflict Spiritual Cenſures, *pro Salute animæ?*

A. No †; * Where the Common or Statute Law giveth Remedy *in Foro ſeculari*, whether the Matter be Spiritual or Temporal, the Cogniſance of that Cauſe belongeth to the King's Temporal Courts only, unleſs the Juriſdiction of the Eccleſiaſtical Court *be ſav'd or allow'd* by the ſame Statute to proceed according to the Eccleſiaſtical Laws---* *Which it is ſuppoſed to be*, unleſs the Statute hath Negative Words ------- as, *It ſhall not be puniſhed otherwiſe*, or *in other Manner*, or the like Effect.

Q. Are Felonies or other *Capital Crimes* examinable in the Spiritual Court?

† Capital Crimes excepted.

A. * They may not originally *examine* such a Crime, to prove a Man *Criminous*, much less when he is so prov'd in the proper Court, may they impeach the Sentence in a Court improper; but they may build a Sentence of Deprivation upon such a Conviction.

Q. What is an Appeal?

A. A removing of a Cause to a superior Court, whereby the Sentence is suspended, till the Appeal is heard and determin'd.

Q. What is the End and Design of an Appeal?

A. 'Tis thus set forth in the *Reformatio Legum: Ut Gravamen impositum reparetur, & ad Corrigendam Iniquitatem & Imperitiam Judicis, & nonnunquam ad ipsius afflicti succurrendum insciticæ.*

Q. To whom, and in what Manner, do Appeals lie in Ecclesiastical Causes?

A. By 24 *Hen.* the VIIIth. *c.* 12. in Causes Testamentary, Causes of Matrimony and Divorces, Right of Tithes, Oblations and Obventions, Appeals lie from the Archdeacon's Court, to the Bishop or Diocesan. From the Bishop or his Commissary, within fifteen Days after Sentence, to the Archbishop. From the Archdeacon of an Archbishop or his Commissary, to the Arches or Audience, and from thence to the Archbishop himself, there to be definitively and finally determined. But by 25 *Hen.* the VIIIth. *c.* 19 an Appeal lies from the Archbishop's Courts, to the *King in the Chancery*; and upon every such Appeal,

peal, a Commiſſion ſhall be directed under the *Great Seal*, to ſuch Perſons as the King ſhall nominate, who, upon Account of the ſpecial Commiſſion or Delegation they receive from the Prince, are commonly call'd *Delegates*.

Q. Does an Appeal lie to the Delegates from *a Local Viſitor?*

A. * No ſuch Appeal lies by this Statute, nor does it lie in any Cauſe of a *Temporal* Nature; nor did it lie from the High Commiſſion Court, when in Being, becauſe they themſelves were * the *King's Delegates*, as acting by immediate Commiſſion from him; and there was no Remedy againſt their Sentences but a new Commiſſion to *others*, grantable in Virtue of the Royal Prerogative, and independent from this Statute.

Q. Is the Judgment of the King's Commiſſioners final?

A. * Yes: But the King, after Definitive Sentence, may grant a Commiſſion of Review; for there are no Words in the Statute to reſtrain him, and the Pope, as ſupream Head, could do the like.

Q. Is it neceſſary that the Delegates in Eccleſiaſtical Cauſes ſhould be *Spiritual* Perſons?

A. The Statute which entitles the King to the ultimate Cogniſance by Commiſſion, doth not limit him, but leaves him wholly to his own Choice, with Power of appointing Commiſſioners out of the *Temporalty*, if he pleaſes:

pleaſes; * And it might be adviſable at the Reformation, when the Biſhops and Clergy were generally ſuſpected of a ſecret Affection to the Papal Authority, to leave him ſuch a Power: But, in Fact, there are no Footſteps of any of the Nobility or Common Law Judges in Commiſſion till the Year 1604, *i. e.* for ſeventy Years after the erecting of that Court, nor from 1604, are they found in above one Commiſſion in forty, till the Year 1639; from whence (*i. e.* from the Downfall of Biſhops, and their Juriſdiction, which enſued) we may date the preſent *Rule of Mixtures* in that Court, of Temporal and Spiritual Judges.

Q. To whom ſhall the Appeal be made in Cauſes which concern the King, his Heirs and Succeſſors?

A. To the Upper Houſe of Convocation, whoſe Judgment ſhall be final.

Q. To whom are Appeals to be made from Places exempt, in ſuch Caſes as they were wont to appeal immediately to the Pope?

A. To the King in Chancery.

Q. According to what Rules do the Delegates proceed?

A. Their Proceedings are according to the Rules of Civil and Eccleſiaſtical Laws; upon which Account it hath been * particularly adjudg'd, that a Suit there doth not abate by the Death of the Parties, this being the Courſe in the Eccleſiaſtical Courts.

Q. Within

Q. Within how many Days muſt all Appeals be from a definitive Sentence?

A. Within Fifteen: But if the Appeal is from an interlocutory Decree, it ought to be made witin ten Days by the Canon Law.

Q. What is an *Inhibition?*

A. An Inhibition is commonly iſſued forth out of an Higher Court Chriſtian, to an Inferior Court Chriſtian, to ſtop Proceedings, and is in the Nature of a Prohibition.

Q. What Rules are to be obſerv'd in granting Inhibitions?

A. * No Inhibitions ſhall be granted unleſs ſubſcrib'd by an Advocate of the Court, or where there is no Advocate, by a Proctor; and before the going out of any Inhibition the Appeal ſhall be exhibited to the Judge, with a Copy of the Acts from which he appealeth; whereby he may be fully inform'd both of the Quality of the Crime, and of the Cauſe of the Grievance; upon Pain of Suſpenſion of the Judge or Regiſter offending, for three Months, and of the Proctor for a Year.

Q. Are Contemners of Rites and Ceremonies allow'd to appeal?

A. After any Judge Eccleſiaſtical hath proceeded judicially againſt obſtinate and factious Perſons and Contemners of Ceremonies, for not obſerving the Rites and Orders of the Church of *England*, or for Contempt of Publick Prayers; no Judge *ad quem* ſhall admit or allow any of his or their Appeals,

Appeals, unleſs, he having firſt ſeen the Original Appeal, the Party Appellant do firſt perſonally promiſe and avow, that they will faithfully keep and obſerve all the Rites and Ceremonies of the Church of *England*, and alſo the preſcript Form of Common-Prayer; and do likewiſe ſubſcribe to the three Articles in the 36th Canon. *Can.* 98.

TIT. XLVI.

CENSURES *and* PUNISHMENTS *in the Spiritual Courts.*

Q. WHAT is the Difference between Eccleſiaſtical and Temporal Puniſhments?

A. The Temporal Courts inflict Puniſhment upon the Body, or by pecuniary Mulcts, or by Forfeiture of Lands and Goods: But the Eccleſiaſtical Courts inflict Cenſures and Puniſhments *pro Salute animæ*, and to reform the inward Man.

Q. What are the Eccleſiaſtial Puniſhments?

A. Purgation, Publick Penance, Excommunication, Interdict, Suſpenſion, Deprivation, and Degradation.

Q. Can any Perſon be compelled upon Oath *to purge* himſelf of any Crime of which he ſtands accuſed?

A. No: By 13 *Car.* II. *c.* 12. Purgation

is taken away, ſo as that none *ſhall be compell'd* to it; but any Perſon may ſtill *offer himſelf voluntarily* to Purgation for the clearing of his Innocence.

Q. What was the ancient Method of Purgation?

A. When any Man or Woman lay under a common Suſpicion or publick Fame of Incontinence, or other Vice, tho' there was not Proof plain and full enough to *Convict* them, yet were they liable to be ſummon'd before the Spiritual Judge, and charg'd with the Crime. If they confeſs'd, they had a certain Penance immediately enjoin'd them. If they denied, the Judge enjoin'd them Purgation, to be perform'd on a Day appointed, by their own Oath, and by the Oaths of five or ſix Neighbours, more or leſs, according to the Nature of the Crime, and the Condition of the Perſon, and thoſe to be of good Fame and ſober Converſation. The Oath of the Perſon ſuſpected was, to declare his own Innocence; and the Oath of the Compurgators, that they believed what he ſwore was true. If the Perſon came at the Day appointed, together with his Neighbours, and purged himſelf according to the Rules of the Church, he was diſmiſſed and declared Innocent, and reſtored to his good Name; but was at the ſame Time enjoyn'd to avoid the Cauſe of Suſpicion, or the Ground of the Fame, for the Time to come. But if he appeared not, he was declared Contumacious, and proceeded

ceeded againſt as ſuch; or if he did appear, and could not perform Purgation (*i. e.* either could not ſwear to his own Innocence, or could not bring others to ſwear that they believ'd he ſwore true) ſuch Failure was taken for Conviction, and the Judge proceeded to enjoin Penance in the ſame Manner as if the Perſon had been duly convicted by his own Confeſſion, or by the Teſtimony of others.

Q. Does it not ſeem an Hardſhip that a Man ſhould be taken for Guilty, becauſe others will not ſwear that they belive him Innocent?

A. Where the Life and Converſation of any Perſon hath drawn upon him ſuch a ſtrong and general Preſumption of Guilt, that tho' he ſwears himſelf Innocent, ſix or ſeven Perſons cannot be found in a whole Pariſh, who believe he ſwears True, ſuch an one ſeems to be fully ripe for the Shame and Scandal of publick Penance.

Q. Is *Purgation* entirely taken away by the forementioned Statute?

A. The *Oath* as to the Party accuſed is taken away, and ſome maintain that *this* being taken away, the Foundation of the whole Proceedings, all the Proceedings of Purgation upon common Fame, do fall too. But ſubſequent Practice, ſince the Statute, at Archiepiſcopal, Epiſcopal, and Archidiaconal Viſitations, and contemporary Expoſitions upon the Meaning of the Statute, ſhew the con-

contrary Opinion of thoſe that could beſt judge of the Intent and Deſign of our Legiſlators, *viz.* that the Statute breaking in upon the Canon Law, or an Eccleſiaſtical Cuſtom, is to be extended only to *that Part* of the *Form* and Method of Purgation, *viz. the Oath*, which is taken away by it; that here is ſtill a *Legal* Purgation left, tho' not the Canonical; for it remains that the Party accuſed ſhould declare his Innocency *without* Oath, and that the Compurgators may ſtill ſwear as to their Belief, that what he ſays is true or falſe. Beſides, if this Branch of Eccleſiaſtical Diſcipline be taken away, and common Fame is of no Force to ground a Proſecution, many ſhameleſs Lewdneſſes, and ſcandalous Immoralities muſt go unpuniſhed, and be ſuffered to reign and triumph.

Q. How many Sorts of Penance are there?

A. Three. *Solemn*, which was perform'd in the Beginning of *Lent*, to which our Church refers in the Commination Office; Publick and Private.

Q. What is Publick Penance?

A. Publick Penance is a Puniſhment impoſed for a Crime, by ſtanding in ſome publick Place, and making Acknowledgment of it to ſatisfy the Church, for the Scandal given by an evil Example.

Q. How is this uſually performed?

A. In the Caſe of Inceſt, Adultery, *&c.* the Sinner is uſually enjoin'd to do publick Penance in the Cathedral or Pariſh Church, or,

or publick Market, Barefoot and Bareheaded, in a white Sheet, and to make an open Confeſſion of his Crime in a preſcribed Form of Words.

Q. What is private Penance?

A. When for ſmaller Faults, a Satisfaction or Penance is to be made in the Court, or before the Miniſter and Church-wardens, or ſome of the Pariſhioners; as in Caſe of Defamation, *&c.*

Q. What is Commutation of Penance?

A. When Penance is changed into a Fine, or Sum of Money, to be given to pious Uſes.

Q. What is to be thought of this Practice?

A. 'Tis a Liberty liable to be abuſed upon many Accounts, and hath in all Times been very much abuſed. And inſtead of regulating Commutations and the Abuſes of them, the Commons in Parliament petitioned (1 *Rich.* II. and 1 *H.* V.) that there might be no Commutations at all. Nevertheleſs the Church has made ſundry Regulations concerning them heretofore, which, if they were now in Force, would go a great way to the Correction of them.

Q. What are thoſe wholeſome Orders for the due Uſe and Application of Commutation?

A. 1. That there be no Commutation at all but for weighty Reaſons, and in Caſes very particular; that is to ſay, either for ſome great Value or Dignity of the Perſon, or for Fear of ſome deſperate Event that will follow in the Party that ſhould be put to open Shame. 2. That it be with the Privity and Advice of the Biſhop. 3. That the Money,

Money be applied to Pious and Charitable Uſes. 4. That if the Crime be publick and notorious, the Satisfaction made to the Church, be ſignified to the Congregation where the Offender dwells. 5. That the Favour of Commutation ſhall not be granted a ſecond Time to the ſame Perſon for the ſame Fault.

Q. How many Sorts of Suſpenſion are there?

A. In the Laws of the Church we read of two Sorts of Suſpenſion; one relating ſolely to the Clergy, the other extending alſo to the Laity.

Q. What is that which relates to the Clergy ſolely?

A. Suſpenſion *ab Officio & Beneficio* jointly, or *ab Officio* or *Beneficio* ſingly; and may be call'd *a Temporary* Degradation or Deprivation, or both.

Q. What is that which relates to the Laity?

A. Suſpenſio ab ingreſſu Eccleſiæ, or from hearing Divine Service, and receiving the Holy Sacrament, which may therefore be call'd a Temporary Excommunication, and was heretofore much in Uſe for Crimes and Scandals of a leſſer Nature, while Chriſtians had true Notions of Church Diſcipline, and few were found ſo wicked, as not to reckon it a great Affliction to be debarr'd the Benefits of Chriſtian Communion, tho' but for a Time.

Q. Is this Cenſure ſtill in Force?

A. Tho' it is now diſuſed, as being thought no Puniſhment by thoſe that deſerve it, yet it is ſtill a *legal* Cenſure of the Church of *England*, as is evident not only from many ancient Canons and Conſtitutions in this Kingdom which are ſtill in Force, but alſo from * an expreſs Act of Parliament, which appoints this Puniſhment for quarrelling, chiding or brawling, in any Church or Church-yard.

Q. What is an *Interdict*?

A. As Suſpenſion takes away one Perſon, ſo does an Interdict a Multitude at once, from the Communion of Chriſtians; and oftentimes the Uſe of the Service and Sermons themſelves: The firſt call'd an Interdict of Perſons, the ſecond an Interdict of Places, and both frequently exerciſed before the Reformation upon whole Villages, Towns, Provinces, and even Kingdoms, till they ſhould make Satisfaction for Injuries done, or abſtain from Injuries they were doing to the Church. This Cenſure hath been long diſuſed.

Q. How many Sorts are there of Excommunication?

A. Major and *Minor*.

Q. What is Excommunication *Major*?

A. An Eccleſiaſtical Cenſure where a Chriſtian is excluded from the Communion of the Church in ſacred Rights and Privileges, and from the Company of the Faithful, ſo

that 'tis Excommuication to keep Company with them.

Q. What is Excommunication *Minor*?

A. When the Perſon is excluded only from Sacraments and Divine Worſhip?

Q. Upon what Perſons is the Sentence of leſſer Excommunication generally paſs'd?

A. Upon ſuch Perſons as are Guilty of Obſtinacy or Diſobedience, in not appearing upon a Citation, or not ſubmitting to Penance or other Injunctions of the Court.

Q. What are the Conſequences of Excommunication?

A. No excommunicate Perſon ſhall be ſuffer'd to come within the Church; nor, if he die under Sentence, ſhall he be allow'd to have Chriſtian Burial. He is likewiſe diſabled to do any Judicial Act, as to ſue, to be a Witneſs, *&c.* And if he does not ſubmit in Forty Days, a Writ ſhall go to impriſon him. *Vide infra. p.* 404.

Q. In what Caſes does Excommunication not diſable?

A. If a Biſhop is Defendant, an Excommunication by the ſame Biſhop againſt the Plaintiff ſhall not diſable him, nor an Excommunication againſt an Appellant while the Appeal is depending: So alſo if a Mayor and Commonalty or any other Corporation Aggregate bring an Appeal; an Excommunication of the Mayor, *&c.* ſhall not diſable them, becauſe they ſue and Anſwer by Attorney.

Q. What is Excommunication *ipso facto?*

A. 'Tis defined by the Canoniſts to be *Excommunicatio facta nullo Miniſterio hominis intercedente*, and is when a Perſon is to be look'd upon as Excommunicate from the Time of his Offence; ſo a Church to which a Clerk is Simoniacally preſented is void *ipſo facto*; the Preſentation was null *ab initio*, tho' it be not declared ſo till many Years after.

Q. Do Offenders who are by Law or Canon declared *ipſo facto* Excommunicate fall under that Sentence without *Conviction* or *Denunciation?*

A. If the Fact be not notorious or evident beyond Exception, it muſt be prov'd; the Offender muſt be convicted thereof at Law, and this tranſmitted to the Ordinary, before he is taken for Excommunicate *in foro Eccleſiæ*; and even then the Excommunication takes no effect as to *Common Law*, till it be decreed by the Ordinary, and publiſhed by the Curate of the Place where the Offender lives.

Q. What is the Manner of Publiſhing particular Excommunication?

A. It is publiſhed by Virtue of an Inſtrument under the Seal of the Court by the Miniſter of the Pariſh.

Q. Are Perſons who are notoriouſly, and beyond doubt guilty of any Crimes for which Excommunication *ipſo facto* is decreed againſt them by the Canons of the Church, really Excommunicated, tho' they be not particu-

larly, by Name, publiſhed and declared to be ſo?

A. Yes; otherwiſe *Excommunicatio ipſo facto* means no more than Excommunication without the Addition of thoſe Words; and there will be no Difference between *Conſtitutio ſententiæ latæ* and *ſententiæ ferendæ.*

Q. What Proviſions have been made for the due and ſolemn Exerciſe of Excommunication in the Church?

A. There have been divers Proviſions made from Time to Time, as, 1. That it be uſed by Way of Puniſhment only for great and heinous Crimes. 2. That it be not pronounced raſhly and precipitately. 3. That it be pronounced by none but the Biſhop or other Perſons in Holy Orders; in Cauſes of Correction, and where it is a Puniſhment inflicted upon great Offences, there to be pronounced by the Biſhop himſelf, or other Eccleſiaſtical *Judge* in Holy Orders; and in Caſes of Contumacy by a Presbyter who hath Authority from the Biſhop or Archdeacon, and whom all Eccleſiaſtical Judges being Laymen ſhould be obliged to call to their Aſſiſtance therein.

Q. Is not the frequent Uſe of Excommunication in Caſes of Contumacy for not appearing or diſobeying of Sentences, tho' in the *ſmalleſt Matters*, and thoſe oft-times of a Civil Nature, one principal Means of bringing it into Contempt?

A. Yes: But yet this is the only way which the Spiritual Court hath to enforce Obedience, and therefore an Expedient was thought of in the Reign of Queen *Elizabeth*, that the Eccleſiaſtical Judge ſhould pronounce ſuch Perſons *Contumacious*, and in *pœnam Contumaciæ*, further pronounce them *Eccleſiaſticæ Juriſdictionis Contemptores*; and if they did not ſubmit in Forty Days, then a Writ *de Contumace capiendo* to be awarded, with like Force, to all Civil Effects, as the Writ *de Excommunicato capiendo* had.

Q. What is the Writ *de Excommunicato Capiendo?*

A. A Writ commonly call'd a *Significavit*, from the Beginning of it, (*Rex vicecomiti Lincoln' Salutem. Significavit nobis venerabilis Pater H. Lincoln' Epiſcopus*) directed to the Sheriff upon Certificate of the Biſhop under his Seal into the Chancery, to apprehend a Perſon denounced Excommunicate Forty Days, for Contumacy or Contempt of the Eccleſiaſtical Laws; and to commit him to Priſon without Bail till he Submits. And this Writ *de Excommunicato capiendo* is * *Debitum juſtitiæ*, and is expreſly ſaid to iſſue *ſecundum Conſuetudinem Angliæ*, according to the Common Law of the Realm.

Q. How long ſhall the Excommunication and Impriſonment continue?

A. Till the Party is reconciled to the Church and diſmiſs'd by Abſolution, and the Writ *de Excommunicato deliberando* upon Certificate

tificate of the Biſhop to the King in Chancery, that the Party hath made his Satisfaction to the Church.

Q. What is the Satisfaction or Submiſſion requir'd for Abſolution and Deliverance?

A. The Excommunicate muſt either make *preſent* Satisfaction at or upon his Abſolution, or *put in Caution* that he will hereafter perform what the Biſhop ſhall reaſonably and according to Law enjoyn him. The uſual way is by real Security, as when a Man engageth Goods, or mortgageth Lands for the Performance, but very often the Ordinaries accept an Oath, *de parendo Juri & ſtando Mandatis Eccleſiæ in forma juris.* Due Caution being offered by the Party, and admitted, the Biſhop may command the Sheriff to deliver him out of the Priſon; but if good and ſufficient Caution is offer'd and not admitted, then a Writ to the Biſhop is provided to deliver him; and if the Biſhop do not deliver him upon the Writ, then the Party may have another Writ to the Sheriff to deliver him, ſuch ſufficient Caution being firſt taken, and not otherwiſe.

Q. What if the Party Excommunicate appeal to a ſuperior Eccleſiaſtical Judge?

A. This puts him in the ſame State he was in before Sentence given, and upon Allegation in behalf of the Party againſt whom the Writ hath gone out, that he hath appealed, and upon Proof made thereof by an authentick Inſtrument, a *Superſedeas* is pro-

vided, or more uſually, eſpecially in doubtful Caſes, a *Scire facias* to warn the Biſhop or the Party proſecuting, to ſhew Cauſe why the Sheriff ſhould not ſurceaſe from attaching the Excommunicate, or why he ſhould not deliver him if he be in Priſon. If the Biſhop in Caſes of *Office*, and the Proſecutor in Caſes of *Inſtance*, appear not in Chancery, the Party is deliver'd; but if they appear, and not the Party, then a Re-attachment goes forth to impriſon him.

Q. What does the Canon decree concerning thoſe who continue Excommunicate without Submiſſion?

A. All who ſtand Excommunicate, unleſs abſolv'd in Three Months after Sentence, ſhall every Six Months enſuing, as well in the Pariſh Church as in the Cathedral of the Dioceſe wherein they remain, by the Miniſter openly in Time of Divine Service, upon ſome Sunday, be denounced and declared Excommunicate, that others may thereby be admoniſhed to refrain their Company and Society.

Q. Can none but the Biſhop certify Excommunication?

A. None but the Biſhop, unleſs the Biſhop is beyond Sea, or *in Remotis*, or unleſs the Certificate is by one that hath Ordinary Juriſdiction, and is immediate Officer to the King's Courts, as the Archdeacon of *Richmond*, or Guardian of the Spiritualties when the See is vacant.

Q. Muſt the Cauſe of Excommunication be ſpecially ſhewn or ſet forth in the Certificate?

A. Yes,

A. Yes, that the Judges may ſee by it whether the Eccleſiaſtical Court have Cogniſance of the principal Cauſe.

Q. Will an Excommunication certified under the Seal of the Commiſſary or Official be allow'd?

A. No; but the Biſhop may Certify an Excommunication made by his Commiſſary; for the Commiſſary acts in Right of the Biſhop.

Q. If the Sheriff deliver Offenders committed upon the Writ of *Significavit* without Order of Law---- ?

A. Upon Complaint of the Biſhop into Chancery, a Writ ſhall be awarded to the Coroners to apprehend the Party Excommunicated, and an Attachment to cauſe the Sheriff to appear and anſwer the Contempt.

Q. What is Deprivation?

A. An Eccleſiaſtical Cenſure by which a Clergyman is deprived of his *Benefice.*

Q. What is Degradation?

A. An Eccleſiaſtical Cenſure whereby a Clergyman is depriv'd of his *Orders.* 'Tis alſo called *Depoſition* from the Miniſtry.

Q. Of how many Kinds is Degradation?

A. There are two Sorts of Degrading at Common Law; one *Summary* by Word or Sentence only; the other *Solemn* by diveſting the Party degraded of thoſe Ornaments and Rights which be the Enſigns of his Order or Degree. He may be ſolemnly ſtripp'd of his Clerical Habit.

Q. What

Q. What Regard have States and Princes uſually paid to the Church and Clergy, in Caſe of the Conviction of Clerks, when any of them have committed a Thing worthy of Death, or open Shame?

A. That he ſhould not be executed or expoſed till he was *Degraded*, and then to be executed or put to Shame as a *Lay* Malefactor.

Q. By whom is the Sentence of Deprivation or of Depoſition to be pronounced?

A. By the Biſhop only, with the Aſſiſtance of his Chancellor, the Dean (if they may be conveniently had) and ſome of the Prebendaries, if the Court be kept near the Cathedral; or of the Archdeacon if he may be had conveniently, and two other at the leaſt grave Miniſters and Preachers, to be call'd by the Biſhop, when the Court is kept in other Places. *Can.* 122.

Q. To what Crimes does Deprivation belong by the *Common* Law?

A. To thoſe that follow, which have been allow'd and confirm'd by the *Temporal* Courts as ſufficient Cauſes of Deprivation. 1. *Want of Orders*, or the being a meer Layman. 2. * *Want of Abilities.* 3. * *Want of Age*, *i. e.* of ſuch Age as the Laws of the Church preſcribe. 4. * *Simony.* 5. * *Infidelity* and *Miſcreancy*, under which Heads may be reckon'd Atheiſm, Hereſy, Schiſm, and the like. 6. * *Incontinence.* 7. * *Drunkenneſs* after ſolemn Admonition. 8. *Murder* and *Manſlaughter*, at leaſt after Conviction in the Temporal Courts. 9. * *Perjury.* 10. *Dilapi-*

10. *Dilapidation.* * My Lord *Coke* ſays, that *Dilapidation of Eccleſiaſtical Palaces, Houſes and Buildings, is a good Cauſe of* Deprivation. But tho' in Equity that Puniſhment may well belong to Dilapidators; yet that it hath ever been inflicted, appears not by any Thing that is alledged, either out of the Books of Common or Canon Law, which ſpeak only of *Alienations.* Some of the abovementioned Crimes have been made puniſhable with Deprivation by particular Statutes. As to other Cauſes of Deprivation, which have been made ſuch by *Statute Law*, they have been ſpoken to under their proper Heads.

Q. What are the Rules of *Common Law* concerning *Diſcharges* from Spiritual Cenſures by *Pardons?*

A. * A Pardon is a Bar to all Suits in the Spiritual Court that are *pro Salute Animæ*, and not excepted, whether *ex Officio*, or *ad inſtantiam partis.*

2. * A Pardon *after Sentence* and Coſts taxed, comes too late to aid the Party in Point of *Coſts.* Nor, Coſts being *duly* taxed *before* the Time of the Pardon, is the Matter alter'd, tho' Appeal is made from the Sentence, becauſe the Party having an Intereſt in the Coſts, which could not be diſcharg'd in the Pardon, the firſt Sentence, as to Coſts, is not ſuſpended by the Appeal.

Q. But if Sentence be given and Coſts taxed, and then a Pardon comes relating to Time *before* ſuch Taxing ---?

A. The

A. * The Pardon takes away the Coſts, unleſs ſuch Coſts were *awarded* before the Time which the Pardon ſpecifies.

Q. What if one refuſes to pay Coſts duly awarded and taxed, and for Contempt is excommunicated and taken upon a Writ *de Excommunicato capiendo*, and then comes a general Pardon of all Contempts ---?

A. Tho' the *Coſts* are not diſcharged, yet the Excommunication, and every Thing conſequent upon that, is diſcharged, and for Payment of the Coſts, the other Party muſt have *New* Proceſs.

3. The *Principal* being pardon'd, the *Acceſſory* is alſo pardon'd and taken away, *i. e.* if the Crime is within the Pardon, and within the Time of the Pardon, the Sentence and Puniſhment for that Crime are immediately taken away, and the Party as to theſe, reſtor'd to his former State. * And this is not only applied to Penances and other Spiritual Cenſures of the ſame kind, as Sentences that are taken off by Pardon, but alſo to Deprivation of Benefices; and not only to the Preventing of Deprivations, but even to the making the Party who was actually depriv'd in Time of Parliament, to be Incumbent as before, by Judgment in Law, without being driven ſo much as to reverſe the Sentence in the Eccleſiaſtical Court.

4. A Pardon cannot *reſtore* any Perſon to a Benefice, which is become void by Act of Parliament.

Q. What

Q. What Reſtraints are laid upon Spiritual Courts from inflicting Temporal Puniſhments?

A. No Spiritual Judge ſhall inflict any Pain, Penalty, Fine, Amerciament, Impriſonment, or other Corporal Puniſhment, for any Contempt, Miſdemeanor, Crime, Offence, Matter or Thing whatever, belonging to Eccleſiaſtical Juriſdiction, upon Pain to forfeit treble Damages to the Party grieved, and 100*l.* to him or them who ſhall firſt ſue for the ſame, and to be diſabled from executing any Office or Imployment in any Court of Juſtice whatſoever. 16 *Car.* I. *c.* 2.

TIT. XLVII.

Spiritual Crimes and Vices reſtrained by Temporal Puniſhments.

Q. WHAT are the Laws which relate to Blaſphemy and Profaneneſs?

A. To prevent the Abuſe of the Name of God in Plays, 'tis enacted, that any Player, *&c.* profanely uſing the Name of God, Jeſus Chriſt, the Holy Ghoſt, or of the Trinity, in any Stage-Play, Interlude, Shew, *&c.* ſhall forfeit Ten Pounds for every ſuch Offence, 3 *Jac.* I. *c.* 21.

Whoever ſhall deny any Perſon of the Trinity, by Writing, Teaching, Printing, or adviſed Speaking, or aſſert more Gods than one, or deny the Chriſtian Religion to be true,

true, or the Holy Scripture of the *Old* and *New Teſtament* to be of Divine Authority, upon Conviction by the Oath of two or more credible Witneſſes, ſhall for the firſt Offence be adjudged incapable and diſabled in Law, to enjoy any Office Eccleſiaſtical, Civil, or Military, or any Profit appertaining to ſuch Office; and if at the Time of his Conviction he ſhall poſſeſs any ſuch Office, Place or Employment, it ſhall be void. For the ſecond Offence, ſhall be diſabled to ſue, proſecute, plead, or uſe any Action or Information, in any Court of Law or Equity, or to be Guardian, or Executor, or Adminiſtrator, or capable of any Legacy or Deed of Gift, or to bear any Office Civil or Military, or Benefice Eccleſiaſtcal for ever, and ſhall ſuffer Impriſonment for three Years without Bail, from the Time of ſuch Conviction. 9, 10 *Will.* III. *c.* 32.

Q. What Time is allow'd for Information, as to Words ſpoken?

A. The Information muſt be within four Days; and the Proſecution within three Months after ſuch Information.

Q. Is there no way to be diſcharg'd of the Penalties of this Act?

A. For the *firſt* Offence any Perſon upon renouncing ſuch Opinion, or acknowledging ſuch Offence in open Court, ſhall be diſcharged from all Penalties and Diſabilities incurr'd by ſuch Conviction.

Q. What

Q. What are the Penalties by Statute upon *Curſing* and *Swearing?*

A. If any Perſon profanely Curſes or Swears in the Preſence or Hearing of any Juſtice of Peace of the County, *&c.* or ſhall hereof be convicted by the Oath of one Witneſs, or Confeſſion of the Party offending before any Juſtice of Peace, Mayor, *&c.* the Offender ſhall forfeit to the Uſe of the Poor, (if Servant, Labourer, Common Soldier, or Seaman) one Shilling. And every other Perſon two Shillings. For the ſecond Offence double, and for the third Offence treble, to be levied by Diſtreſs by Warrant of one Juſtice. If no Diſtreſs, the Party to be ſet in the Stocks one Hour for one Offence, two Hours for more than one, if above Sixteen Years of Age: If under that Age, and he doth not pay the Penalty, he ſhall be whipped by the Conſtable, by Warrant from the Juſtice, or by the Parent, Maſter or Guardian in the Preſence of the Conſtable. 6, 7 *Will.* III. *c.* 11.

Any Juſtice or Magiſtrate omitting his Duty in the Execution of this Act, forfeits Five Pounds.

This Act muſt be read by Miniſters in the Church the next Sunday after every Quarter-day, *viz.* at *Midſummer*, *Michaelmaſs*, *Chriſtmaſs*, and *Lady-Day*, upon Forfeiture of Twenty Shillings for every Omiſſion. Information muſt be given within ten Days. Convictions are to be Regiſtred and certified to the Seſſions.

[Note,

[Note, *The Laws againſt profaning the Lord's Day, and for the religious Obſervance thereof, are placed under* Title X. Solemn Times of Divine Service.]

Q. What Penalty is there upon Buggery and Sodomy?

A. By 25 *Hen.* VIII. *c.* 6. 'Tis Felony without Benefit of Clergy †; Sodomites were anciently to be burnt, and ſome ancient Books make the Puniſhment of it Burning alive, and call it Treaſon, *i. e.* Treaſon againſt the King of Heaven, or a Rebellion againſt the Order of Nature which he hath eſtabliſhed.

Q. What Penalty is there upon Rape and Raviſhment?

A. It is Felony without Clergy to commit a Rape, *i. e.* to know a Woman carnally by Force. And whoſoever ſhall carnally know and abuſe any Woman-Child under the Age of Ten Years, ſhall ſuffer as a Felon, whether with her Conſent or without it. 18 *Eliz. c.* 7.

Q. What if a Woman goes away with an Adulterer, and continues with him?

A. She ſhall be debarr'd of her Dower, except her Husband willingly reconcile and ſuffer her to dwell with him. 13 *Edw.* I. *c.* 34.

Q. What is a Baſtard?

† Two remarkable Executions have been made upon this Statute, the firſt of *Stafford*, 5 *Jac.* I. who was found guilty in the King's Bench; the ſecond of the Lord *Audly*, who was arraign'd and found Guilty by his Peers; and both were hang'd as the Act directs.

A. He

A. He that is born out of Marriage. By the Common Law, if the Husband is within the Four Seas (the Juriſdiction of the King of *England*) ſo that by Intendment of Law he may come to his Wife, and the Wife hath Iſſue; no Proof is to be admitted to prove the Child a Baſtard, except there is an apparent Impoſſibility that the Husband ſhould be the Father of it, as if the Husband is but Eight Years old, *&c.* then ſuch Iſſue is a Baſtard, tho' born within Marriage. But if the Iſſue is born within a Day after Marriage between Parties of full Age, where the Husband is under no apparent Impoſſibility, the Child is legitimate, and is ſuppoſed to be the Child of the Husband.

Q. What is the Law concerning Baſtards and their reputed Fathers, *&c.*

A. Any Juſtice may puniſh the Father and Mother by Corporal Puniſhment (tho' this is ſeldom inflicted where the Pariſh is ſav'd harmleſs) and oblige one of them to maintain the Child, and in Default of obeying ſuch Order, may commit the Party to Gaol. Any lewd Woman having a Baſtard which may be chargeable to the Pariſh, ſhall be ſent to the Houſe of Correction for one Year, and offending again ſhall remain there till ſhe find Sureties for her good Behaviour.

Any Woman deliver'd of a Baſtard Child, and endeavouring to conceal the Death of it, ſhall ſuffer Death as in Caſe of Murder, unleſs

ſhe can prove by one Witneſs at leaſt that it was born Dead. 21 *Jac.* I. *c.* 27.

If any reputed Father or Mother of Baſtard Children, having ſufficient to maintain them, run away and leave them, the Church-Wardens may ſeize ſo much of the Goods and Chattels for the Diſcharge of the Pariſh, as two Juſtices ſhall think ſufficient, and diſpoſe of them by order of Seſſions. 13 *Car.* II. *c.* 12.

Q. What Penalty is there upon Drunkenneſs?

A. If any Perſon ſhall be Drunk and convict thereof, he ſhall forfeit for every Offence Five Shillings, to be paid within a Week after Conviction to the Church-Wardens, for the Uſe of the Poor of the Pariſh: Or, if not able to pay be committed to the Stocks by the Space of Six Hours. One convicted a ſecond Time of Drunkenneſs ſhall be bound in Ten Pounds, with two Sureties to his good Behaviour. 4 *Jac.* I. *c.* 5.

Any Inn-Keepers ſuffering Perſons to tipple in their Houſes, and to continue Drinking, other than invited by Travellers or Labouring Men for one Hour at Dinner, or Labourers lodging there, or for neceſſary Occaſions to be allow'd by two Juſtices, ſhall be diſabled for three Years, and the Perſon offending by *Tippling*, *&c.* ſhall pay Three Shillings and Four Pence; by *Drunkenneſs*, Five Shillings. *Ibid.*

TIT. XLVIII.

Temporal Perſons, and Matters of Spiritual Cognizance and Concern.

Q. WHAT Authority have Biſhops to grant Licences for the Practice of Surgery?

A. By 3 *Hen.* VIII. *c.* 11. No Perſon in *London*, or within ſeven Miles ſhall practiſe Phyſick or Surgery, unleſs licenſed by the Biſhop of *London*, or Dean of St. *Paul's*, calling to him four Doctors of Phyſick, and for Surgery, other expert Perſons in that Faculty, upon Pain to forfeit five Pounds *per* Month; nor any Perſon *out* of the ſaid City and Precinct in any other Dioceſe, till firſt examined and approv'd by the Biſhop of the Dioceſe, or his Vicar General, upon the like Penalty; one half to the King, the other to him that will ſue for it. Afterwards, by *Stat.* 14, 15 *Hen.* VIII. It was enacted, that none ſhould practiſe *Phyſick* in the City of *London* or ſeven Miles round, but who ſhould be firſt licenſed under the Common Seal of the Preſident and College of Phyſicians, nor in any other Part of *England*, till ſuch Time that he be examined at *London* by the ſaid Preſident, and three of the Elects, and have from them Teſtimonials of their Approving and Examination: Unleſs

Graduates in *Oxford* or *Cambridge* without Grace.

Q. What Authority have Biſhops over *Schools* and *Schoolmaſters?*

A. Agreeable to the ancient as well as modern Laws of the Church, and alſo to the original Inſtitution of them, Schools for the Inſtruction and Education of Youth, have ever been under the Direction of the *Spiritual Power:* And by the Seventy-ſeventh Canon, No Man ſhall teach, either in publick School, or private Houſe, without Licenſe from the Biſhop or Ordinary, and without having firſt ſubſcrib'd to the firſt and third Articles, and Part of the ſecond, in the Thirty-ſixth Canon.

Q. What Penalty is there by Statute upon teaching School without Licenſe, *&c.*

A. By 13, 14 *Car.* II. *c.* 4. Every Schoolmaſter keeping any publick or private School, and every Tutor in any private Family, ſhall ſubſcribe the Declaration of Conformity; and unleſs he be licenſed by the Ordinary, and hath ſubſcrib'd the ſaid Declaration, he ſhall for the firſt Offence ſuffer three Months Impriſonment, and for the ſecond, three Months Impriſonment and five Pounds Forfeiture.

Q. What is required of a Perſon who ſues for a Licenſe?

A. By 11 *Ann. Seſſ.* 2. *c.* 7. The Biſhops, *&c.* ſhall grant no Licenſe, unleſs the Perſon who ſues for the ſame, produce a Certificate of his having receiv'd the Sacrament according to the Uſage of the Church of *England*, within

within one Year next before the granting ſuch Licenſe, under the Hand of the Miniſter and one of the Church-Wardens, and ſhall have taken and ſubſcrib'd the Oaths of Allegiance and Supremacy, and Abjuration, and made and ſubſcrib'd the Declaration againſt Tranſubſtantiation, *&c.* before the Biſhop or Ordinary, who is by this Act required to adminiſter and receive ſuch Oath and Declaration, and keep a Regiſter of the ſame, and of the ſubſcribing ſuch Oaths and Declarations, *&c.*

Q. Does this Act extend to all Tutors and Schoolmaſters whatſoever?

A. Not to any Tutor in the Univerſities, nor to any Tutor in Noblemens Families, ſo as ſuch Tutor do in every Reſpect qualify himſelf according to this Act, (except only in that of taking Licenſe from the Biſhop or Ordinary.) Nor to any Perſon who ſhall inſtruct Youth in Reading, Writing, Arithmetick or Mathematical Learning only, ſo far as it relates to Navigation, and taught in *Engliſh* only.

Q. What is the Duty of a Schoolmaſter?

A. Schoolmaſters are by the Seventy-ninth Canon to teach their Scholars the Catechiſm, and bring them to Church upon Holydays, where there are Sermons, and to teach them ſelect Sentences of Scripture, and *Henry* VIII's Grammar; in which Things if they offend, they ſhall be ſuſpended.

Q. What if a Perſon licenſed ſhall teach

any other Catechiſm than that in the Common-Prayer?

A. His Licenſe ſhall be void, and he ſhall be liable to the Penalties of the ſaid Act 11 *Ann. c.* 7.

Q. What Penalty is there upon a Papiſt teaching School, *&c.*

A. If any Papiſt ſhall be convicted of keeping School, or of taking upon himſelf the Education, or Government, or Boarding of Youth, he ſhall be adjudg'd to perpetual Impriſonment. 11, 12 *Will.* III. *c.* 4.

Q. A Schoolmaſter may be profecuted in the Spiritual Court for teaching without Licenſe; but may he be turn'd out by the Ordinary, if he deſerves it?

A. * It has been held, that where the Patronage is not in the Ordinary but in the Feoffees, or other Patrons, the Ordinary cannot put a Man out, and Prohibition was granted; the Suggeſtion for which was, that he came in by *Election*, and that it was his *Freehold.*

Q. What is the Conſequence of this Poſition?

A. That a Schoolmaſter being once licenſed and having ſubſcribed, as he is bound, to the Articles and Liturgy of the Church of *England*, altho' he ſhall afterwards inſtill into the Youth that are under his Care, Doctrines that are not only contrary to theſe, but to the Chriſtian Religion in general, and altho' this ſhall appear never ſo plainly, yet he ſhall go on in Defiance of the Ordinary to corrupt

Youth, and to act in downright Contradiction to what he ſubſcrib'd before him, and ſhall not be queſtioned in order to Deprivation, but by Feoffees or Patrons, *i. e.* by thoſe, who, ordinarily ſpeaking, are very uncapable of judging whether he be guilty or innocent upon theſe *important* Heads.

Q. Does the Argument of *Election* and *Freehold* carry any Weight in it?

A. If *theſe* are a Bar to his being deprived by *Ordinary* Authority, then *Preſentation* by a *Lay Patron*, and the Parſon's *Freehold* in the Benefice, are as good a Plea againſt Deprivation by the like Authority: And yet this Plea hath always been rejected by the Temporal Courts, and with very good Reaſon.

Q. What other Penalties are there by Statute upon maintaining Schoolmaſters and teaching School without Licenſe of the Ordinary?

A. By 23 *Eliz. c.* 1. No Corporation, or other Perſon, ſhall keep or maintain a Schoolmaſter, which does not conſtantly repair to Church, or is not allow'd by the Ordinary, on Pain of ten Pounds a Month; and ſuch Schoolmaſter ſhall be diſabled for ever to teach Youth, and ſuffer a Year's Impriſonment. And

1 *Jac.* 1. *c.* 4. §. 9. No Perſon ſhall be a Schoolmaſter in any Place out of the Univerſities, except it be in ſome publick Grammar School, or ſome Gentleman's Houſe that is no Recuſant, and except the Perſon *be licenſed by the Ordinary*, on Pain that as well the Schoolmaſter,

maſter, as the Perſon that retains him, ſhall each of them for every Day forfeit forty Shillings.

Q. Can any one teach School in a Country Town where there is a publick School founded already?

A. The Canon diſallows it, and in Eccleſiaſtical Records we meet with Inhibitions to Schoolmaſters not to teach *in præjudicium liberæ Scholæ. Vid. Cod. p.* 1145.

Q. Who have the Right of viſiting *Hoſpitals?*

A. By 2 *Hen.* V. *c.* 1. All Hoſpitals of *Royal Patronage and Foundation* ſhall be viſited by the Ordinaries in Virtue of the King's Commiſſion, and all *other* Hoſpitals, by the Ordinaries, according to the Laws of Holy Church, as to them belongeth. * Yet 'tis ſaid by my Lord *Coke*, that if the Hoſpital be *Lay*, the Patron ſhall viſit, and not the Biſhop.

Q. Can Hoſpitals be founded without Licenſe or Writ of *ad quod Damnum?*

A. By 39 *Eliz. c.* 5. (made perpetual 21 *Jac.* I. *c.* 1.) Any Perſon ſeized of an Eſtate in Fee Simple, his Heirs, Executors, and Aſſigns, by Deed inroll'd in Chancery, may found an Hoſpital to have Continuance for ever; and from Time to Time place therein ſuch Head and Members, and ſuch Number of Poor, as to him, his Heirs and Aſſigns ſhall ſeem convenient. Which Hoſpital ſhall be incorporated and have perpetual Succeſſion, under ſuch Name, and be go-

vern'd,

govern'd, ordered, directed, and viſited, by ſuch Perſons, and according to ſuch Statutes, not being contrary to the Laws of the Land, as the Founder, or Founders thereof in Writing under Hand and Seal ſhall appoint. And ſhall alſo have ſuch Power to purchaſe, take, hold, receive, and enjoy, and have to them and to their Succeſſors for ever, as well Goods and Chattels, as Manors, Lands, Tenements, and Hereditaments, being Freehold, of any Perſon or Perſons whatſoever, (ſo that the ſame exceed not the Yearly Value of Two-hundred Pounds, above all Charges and Repriſes, and be not holden *in Capite*, or by Knight's Service) without Licenſe or Writ of *ad quod damnum*, the Statute of *Mortmain*, or any other Statute notwithſtanding. Provided that no Hoſpital ſhall be erected without an Endowment of Lands, *&c.* of the clear Yearly Value of ten Pounds.

Q. Do the Words of this Statute which enable the Founders to appoint a Viſitor, take from the Biſhop that Power which *de Jure* he had, and which by the forementioned Statute of 2 *Hen.* V. *c.* 1. is recogniſed and confirmed, to viſit Hoſpitals and other charitable Foundations?

A. No; the Appointment here mentioned ſeems not to *exclude* thoſe from viſiting who by Common Law and by expreſs Act of Parliament had a general Right before to viſit Hoſpitals; inaſmuch as the ſame Place may well be viſitable by *Two* different Powers:

So

So it is in the Caſe of every Cathedral and every Dioceſe, which are Viſitable as well by the Metropolitan as the Biſhop.

Q. But is it not uſually ſaid on this Occaſion, that where a *Local Viſitor* is appointed, the Viſitation of the *Ordinary* can be exerciſed upon the *Perſons* only, according to the *Canons* of the Church, and not according to the *Local Statutes*?

A. This is, and ever ſince the Time of *Hen.* VIII. hath been, underſtood otherwiſe; ſince the Biſhops of the Churches of the *new Foundation*, (who are conſtituted *Local Viſitors* by the King,) do always viſit upon the Local Statutes, when they viſit Triennially and *Jure Ordinario*, as much as when they viſit *Jure Locali*.

Q. What Care is taken by Statute to redreſs Miſemployment of Lands, Goods and Stocks of Money given to *Charitable Uſes*?

A. By 43 *Eliz. c.* 4. the Lord High Chancellor (or Chancellor of the Dutchy of *Lancaſter*, within that Precinct) may award Commiſſions into any Part of the Realm reſpectively, to the Biſhop and his Chancellor, (if there be any Biſhop of the Dioceſe at that Time) and to other Perſons of good Behaviour, authorizing four or more of them to enquire, as well by the Oaths of twelve or more lawful Men of the Country, as by all other good and lawful Ways, of all Grants, Gifts, Augmentations, Limitations and Appointments, and of all Abuſes and Miſemployments of all Lands,

Lands, Tenements, and Hereditaments, and of all Goods and Chattels, given, limited and appointed to Charitable Uſes, and make Orders for the more faithful Employment of them; which Orders ſhall ſtand firm and good till altered by the Lord Chancellor, upon Complaint by any Party grieved to be made to him.

Q. Does this Act extend to Corporations where there are Special Governors or Viſitors appointed?

A. * No; where the Land is given to Perſons in Truſt to perform a charitable Uſe, and the Donor hath appointed *Special Viſitors* to ſee that the Truſtees perform the Uſe according to his Intent; in that Caſe, if the *Truſtees* defraud the Truſt, the Commiſſioners cannot meddle, but the Viſitors are to reform it: But where the Viſitors are *Truſtees* alſo, there the Commiſſioners may, by their Decree, reform the Abuſe of the Charity; for otherwiſe, ſuch Breach of Truſt would eſcape unpuniſhed, unleſs in *Chancery* or in *Parliament*; which were a tedious and chargeable Suit for poor Perſons.

Q. Is it neceſſary that the Biſhop or his Chancellor ſhould be preſent at the Execution of the Commiſſion?

A. No; for none is of the *Quorum*, but the Biſhop muſt be *named* in the Commiſſion, if the See is full, otherwiſe the Commiſſion is void.

Q. What

Q. What if the See be *void* at the Sealing of the Commiſſion ---?

A. Then the Biſhop need not be named a Commiſſioner, *neither his Chancellor.*

Q. If the Biſhop be named a Commiſſioner and die before the Certificate return'd ---?

A. This doth not avoid the Commiſſion, but the other Commiſſioners may proceed.

Q. Is there any Proviſo in this Act for the Juriſdiction of the Ordinary?

A. 'Tis ſpecially provided, that neither this Act nor any thing therein contained, ſhall be any way prejudicial or hurtful to the Juriſdiction or Power of the Ordinary, but that he may lawfully in every Cauſe execute and perform the ſame, as though this Act had never been had or made.

Q. Have the Commiſſioners Power to decree Recompence where there has been Breach of Truſt, or Fraud?

A. They or any four or more of them may make Decrees and Orders for Recompence to be made, by any Perſon or Perſons, who being put in Truſt, or having Notice of the charitable Uſes, hath or ſhall break the ſame Truſt, or defraud the ſame Uſes, by any Conveyance, Gift, Grant, Leaſe, Demiſe, Releaſe or Converſion whatſoever, and againſt the Heirs, Executors and Adminiſtrators of him, them, or any of them, having Aſſets in Law or Equity, ſo far as the ſame Aſſets will extend.

Q. How are their Decrees to be enforced?

A. They

A. They ſhall be certified into the Court of Chancery, and the Lord Chancellor (or Chancellor of the Dutchy) ſhall take Order for the due Execution of them.

Q. What if any Perſon finds himſelf grieved with any of the ſaid Orders, Judgments or Decrees?

A. He may complain to the Chancellor, *&c.* who ſhall proceed to the Re-examination, Hearing and Determining thereof, and upon Hearing thereof, ſhall and may annul, diminiſh, alter, or enlarge the ſaid Orders, and tax and award good Coſts of Suit, againſt ſuch Perſons as ſhall be found to complain without juſt and ſufficient Cauſe.

Q. Can ſuch Determination, once made, be re-examined upon a Bill of Review, as is uſual in other Caſes in Chancery?

A. No; here the Decree is concluſive, becauſe it takes it's Authority by the Act of Parliament, which mentions but one *Examination.* But the Party grieved may petition *the King in Parliament*, and have his Complaint examined there, and ſo the Decree may be confirmed, altered or annulled; and then be *final.*

Q. What is incumbent upon the Miniſter and Church-wardens with reſpect to *Briefs?*

A. Being ſent or delivered to the Church-wardens, *they* ſhall endorſe the Time of their receiving them, and *forthwith* deliver them to the Miniſters or Curates, who, upon receiving them, ſhall in like Manner endorſe the

the Time they reſpectively received the ſame, and ſet their Names thereto; and on ſome *Sunday*, within two Months after ſuch Receipt, immediately before Sermon, openly read, or *cauſe them to be read*, in their reſpective Churches. The Church-wardens ſhall collect, either in the Church, or from Houſe to Houſe, as the Brief directs; and on every ſuch Collection made, the Sum collected, with the Time and Place, fairly written, in Words at length, ſhall be endorſed, and ſigned by the Miniſter and Church-wardens. The Church-wardens upon Delivery of the Briefs and Monies collected thereon to the Undertaker or Collector of them, ſhall take a Receipt for the ſame, in ſome Book to be kept for that Purpoſe; the Briefs ſhall be returned in ſix Months. In every Pariſh ſhall be kept a Regiſter by the Miniſter, of all Monies collected by Virtue of ſuch Briefs, therein alſo inſerting the Occaſion of the Brief, and Time when the ſame was collected, to which all Perſons at all Times may reſort without Fee.

Q. What Penalty is there upon Miniſter or Church-warden, offending, or neglecting his Duty in the Premiſes?

A. The Penalty of twenty Pounds, to be recovered by Action of Debt, Bill, Plaint, or Information. 4, 5 *Ann. c.* 14.

Q. What Penalty is there upon Farming Briefs?

A. The Agreement ſhall be void, and the Farmers forfeit 500 *l.* each, to the Benefit of the Sufferers. *Ibid.*

TIT.

TIT. XLIX.

Benefit of Clergy, and Purgation of Clerks convict.

Q. WHAT is meant by *Benefit of the Clergy?*

A. Benefit of the Clergy was an antient Privilege of the Church, where one in Orders claimed to be delivered to his Ordinary, to purge himſelf of a Felony. For the Pope endeavoured to exempt the Clergy from the Juriſdiction of Lay Judges, in Caſe of Life and Member; which the Temporal Courts would not yield to, but only in Part, (*viz.*) as to this Privilege in Caſe of Felony. The Controverſy betwixt the Eccleſiaſtical and Temporal Juriſdiction being thus adjuſted, all Perſons that could read were allowed to be Clerks; for heretofore few were bred up to Learning, unleſs thoſe which were deſigned for Orders, and this favourable Conſtruction of the Statutes, was not only intended as an Encouragement to Learning, but as an Exemption of ſuch who were *capable* of receiving any Orders when there was Occaſion for their Service.

Q. Was Benefit of Clergy to be claimed *before* or *after* Conviction?

A. * The Claim of Clergy might antiently be made upon Arraignment, and *before* Conviction, or as ſoon as the Priſoner was brought

to

to the Bar. Afterwards it could not be claimed till after Conviction: Which Courſe was taken by the Temporal Courts for two Ends; one, to retain their Juriſdiction over the Clergy, which the Clergy laboured to diſannul, by challenging the Priſoner *at the firſt*; the other, to bring Forfeiture of Goods to the King by the Means of the Common Law, that the Offence ſhould not utterly paſs unpuniſhed by the Temporal Court, and yet the Life of the Offender be ſaved. This Alteration was made in the Time of *Hen.* VI. The Forfeitures, if the Clerk purged himſelf, were to be reſtored.

Q. What was the Method of Purgation?

A. The Clerk, being delivered to the Ordinary, was to purge himſelf by his own Oath, affirming his Innocency, and the Oaths of twelve Compurgators, as to their Belief of it, before a Jury of twelve Clerks. If he failed of his Purgation, he was deprived of his Character, or he was to be kept in Priſon till a Pardon; if he purged himſelf, he was ſet at Liberty. Sometimes the Delivery to the Ordinary was without Purgation, as upon Attainder by Confeſſion of the Felony, or by Verdict, where the Felony was notorious, and then the Clerk was to be degraded or kept in Priſon by the Ordinary.

Q. Was there no Difference made between thoſe who could read, and thoſe who were really Clerks, in this reſpect?

A. By 4 *Hen.* VII. *c.* 13. A Convict of Felony (not being within Orders) ſhall be burned in the Brawn of the Left Thumb before he is delivered to the Ordinary; and every Perſon (not being within Orders) which hath once been admitted to the Benefit of Clergy, upon the ſecond Arraignment ſhall not be admitted to it: But Clerks may have the Benefit of Clergy twice, and ſhall not be burnt in the Hand.

Q. When was Purgation taken away?

A. By 18 *Eliz. c.* 7. An Offender admitted to his Clergy, after Burning in the Hand, ſhall not be delivered to his Ordinary, but ſhall be enlarged by the Court, or be detained in Priſon at Diſcretion; but not longer than for one Year.

Q. Is *Reading* laid aſide as well as *Purgation?*

A. Yes, by 5 *Ann. c.* 6. If any Perſon convict of ſuch Felony for which he ought to have the Benefit of Clergy, doth pray the Benefit of this Act, *he ſhall not be required to Read*, but ſhall be puniſhed as a Clerk convict; and Perſons burned in the Hand for Theft or Larceny, may be ſent by the Judges to a Houſe of Correction or Workhouſe, not leſs than ſix Months, nor above a Year. And by 4 *Geo.* I. *c.* 11. Perſons convict of Larceny, *&c.* within the Benefit of the Clergy, *may* be ſent to the Plantations in *America* for ſeven Years, inſtead of being Burnt in the Hand.

Q. Is Clergy allowed in all Felonies?

A. There were few Caſes wherein the Common Law denied it, unleſs in Caſe of High Treaſon and Sacrilege, by 25 *Ed.* III. *c.* 4. But this Privilege is taken away by many ſubſequent Statutes in ſeveral Offences; and in all Felonies where it is not expreſly taken away by ſome Statute, it ſhall be allowed. Women alſo upon Conviction ſhall ſuffer the ſame Puniſhment as a Man ſhould ſuffer that has the Benefit of his Clergy allowed him in the like Caſe.

TIT. L.

Privilege of SANCTUARY.

Q. WHAT was the antient Privilege of Sanctuary?

A. Perſons having committed any Offence for which they might be proſecuted to the Loſs of Life or Limb, might flee to the Church or Church-yard for Protection; or to ſome Religious Houſe, having Privilege of Sanctuary, and there either continue, or, abjuring the Realm, be allowed to depart without Moleſtation, whilſt upon the Highway to any Port which they ſhould chooſe.

Q. How long might Perſons thus fleeing for Sanctuary be protected?

A. Sanctuary, *de jure Communi*, was only for forty Days, which was the Caſe of all Parochial

chial Churches and Church-yards; the Enjoyment of it for Life, or as long as the Party pleaſed, which was uſually the Caſe of Religious Houſes, depended upon *Special Grants*, which Grants were made by the King, and confirmed by the Pope.

Q. Of what Antiquity was this Privilege?

A. This Cuſtom of the Chriſtian Church, taken from the *Jewiſh* Law, is as old as the Time of *Conſtantine the Great*, and ſeems at firſt to have been a Privilege more peculiarly annex'd to the *Altar*, (called therefore ἄσυλος τράπεζα, or the Table from which no one could be raviſhed or taken away.) But in the *Theodoſian* Code, under the Title *De his qui ad Eccleſias Confugiunt*, not only the *innermoſt Part* of the Temple, *viz.* The Altar and the Body of the Church, are intitled to the Privilege of Sanctuary, but alſo the Houſes and Lodgings of Biſhops and Clergy, with Gardens, Baths, Courts and Cloiſters.

Q. What was the Deſign of Sanctuary?

A. Not to patronize Wickedneſs, or to ſhelter Men from the due Execution of Juſtice, or the Force of the Laws in *ordinary* Caſes; but chiefly to be a Refuge for the Innocent, the Injured and Oppreſſed: Or, in *doubtful* Caſes, whether Criminal or Civil, only to give Men Protection ſo long, till they might have an equitable and fair Hearing of the Judges, and not be proceeded againſt barbarouſly and rigorouſly, under Pretence and Colour of Juſtice; or at moſt, only to give Biſhops Opportunity

to intercede for Criminals and Delinquents, in such Cases as it was both becoming and lawful for Bishops to turn Intercessors. To which may be added, that the *Amendment* of the Persons was probably one great Reason why many Religious Houses were allow'd perpetual Sanctuary, or during Life; that they might there spend the Remainder of their Days in Piety and Devotion.

Q. How came Sanctuaries in *England* to be abolished? and when?

A. It being found by Experience that this Practice was much abused, and an Encouragement to many licentious and disorderly Practices, it was taken away for Felony, Murder, and all Grosser Crimes, by *Stat.* 32 *Hen.* VIII. *c.* 12. but as for lesser Crimes, not till the 21st of King *James* I. when it was enacted, that no Sanctuary or Privilege of Sanctuary should be hereafter admitted or allow'd in any Case.

TIT. LI.

The State and Condition of Religious Houses and Persons.

Q. WHAT Rules do we meet with in the Legatine and Provincial Constitutions, concerning the Foundation of Religious Houses, and the Admission, Probation, and Profession of the *Religious*?

A. In

A. In the firſt Place, whoever had a Mind to found a Religious Houſe, was obliged to take the *Rule* and Inſtitution from the Ordinary of the Place. As to the Age of Admiſſion, Monks were not to be receiv'd, in *England*, under the Age of Eighteen Years; and by a Statute 4 *Hen.* IV. *c.* 17. no Friers (of which there were four Orders, *viz. Minours*, *Auguſtines*, *Preachers*, and *Carmelites*,) could receive into their Order any Infant under the Age of Fourteen, without the Conſent of his Parents or Guardians. Nothing was to be given for Admiſſion; and the Novices, after a Year of Probation, were obliged to make Profeſſion; nor could they, having once profeſſed, return to the Secular Life, without Diſpenſation from the Pope.

Q. What general Reſtraints were they under beſides thoſe of the *Rule* of their Order?

A. They were forbid to enjoy Property, or to traffick, or to engage themſelves in Secular Buſineſs. They could neither make a Will, nor be Executors, nor take upon them the Diſtribution of Goods, without the Engagement of the Superior for their Fidelity, or Licenſe from their Ordinary. They were confined to their Houſes, nor ſuffer'd to go abroad without leave of the Superior: But particularly the Nuns were not to go abroad, tho' upon a juſt Occaſion, *alone*, nor without a Day fixt for their Return; nor to ſtay out of their Houſes, even with their neareſt Relations, for above three Days.

They might go into the Oratory, for Prayer; the Chapter, for Penance; the Dormitory and Refectory, for Sustenance and Refreshment; at all other Times they were to be confin'd within their Cloyster, and give themselves to Watchfulness and Contemplation; nor were any Seculars allow'd to have Access to them, but for urgent Cause, nor to converse with them, otherwise than in publick Places where there could be no Suspicion, and in the Presence of at least another Nun.

Q. What Regulations were the Religious under in Respect of Diet, Furniture, and Apparel?

A. They had stated Hours at which they were obliged to eat in common, and at no other Times, unless in the *Infirmary*, when for Weakness or other just Cause, they had a Relaxation from the Austerities of their Religious Observances, during which Time they were said *in Misericordia commorari*; but even then they were oblig'd to have two Seniors at the least, to be Witnesses of their Behaviour, and to testify it to the Chapter; what remain'd of their Meals was to be given to the Poor. Their Furniture and Apparel were to be plain and cheap, and their Diet moderate: The *Benedictines* in particular obliged themselves to a total Abstinence from Flesh.

Q. What particular Rules were there for Piety and Chastity in Religious Houses?

A. The Abbots were obliged to change their Chaplains, or some one of them, yearly, that they might have the more Witnesses of their

their Converſation, who might be ready to atteſt their Innocence in Caſe of Scandal. The Religious were enjoin'd to make *frequent Confeſſions*, and the Superiors to make Enquiry, once a Month at leaſt, whether this was duly obſerv'd. To commit Lewdneſs with a Nun was called Sacrilege and Inceſt, and by a Conſtitution of Archbiſhop *Peccham*, whoever was guilty of it incurr'd the Greater Excommunication, and was not to be abſolv'd, (unleſs at the Point of Death) but by the Biſhop alone.

Q. How often were the Religious oblig'd to hold their General Chapters?

A. The Abbots and Priors, *&c.* were by a Decree of the Council of *Lateran* under *Innocent* III. to hold a general Chapter every three Years, in which all who were of the ſame Order and Province were oblig'd to join: And when ſome Religious Houſes of the Order of St. *Auguſtine*, who had been ſeparated from the Mother Churches beyond Sea, and who differ'd from the reſt of the ſame Order in the Province of *Canterbury*, upon Account of *Ceremonies*, had therefore refuſed to join with them in the General Chapter, a Conſtitution was made by Archbiſhop *Peccham* to oblige them ſo to join; or at leaſt to hold Chapters of their own, if the Difference was in *Subſtantials*, *viz.* In the Abdication of Property, in the Obſervation of Chaſtity, and in Obedience.

Q. What Care was taken that the Religious ſhould be acquainted with the *Conſtitutions*?

A. The Abbots and Priors were to take Care that the Chief of them, which related to them and their Order, ſhould be written immediately after the *Rule*, and publickly read twice a Year in the Monaſteries, at the Beginning of *Advent* and *Lent*.

Q. What Rules were there for the better Ordering of their Temporal Poſſeſſions?

A. The Governors of Religious Houſes are by a Conſtitution of Archbiſhop *Stephen* forbid to ſell or give † Corrodies, either Temporary or Perpetual, to any Perſons, without urgent Cauſe, and the Conſent of the Dioceſan. § Liveries alſo (which is but another Name for Corrodies) are forbid to be ſold by a Conſtitution of *Othobon*, upon Pain of *Anathema*.

No Religious were allow'd to Farm any of the Poſſeſſions of the Houſe, nor to have the Cuſtody of a Manor, nor to farm a Church in which they had an Intereſt.

The *Obedientiaries*, (*i. e.* thoſe who were under the Obedience of their Prelates, and concern'd in the Adminiſtration of Offices belonging to the Monaſteries) and alſo the greater Prelates, (*i. e.* the Abbots and Priors) were to account before the Convent, at leaſt twice a Year for all Receipts and Diſburſements.

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† *Vide* Page 224.

§ Certum quid (quod communiter Liberationes appellant) communiter vendant & aſſignant pro vitæ neceſſariis, ſingulis diebus vel certis temporibus exſolvendum. *Othob.*

Q. In what Manner were Religious Houſes protected from Burthens and Impoſitions?

A. They were greatly overcharg'd by the Reſort of great Men and others, who liv'd upon them, fiſh'd in their Ponds, hunted in their Parks, lodg'd in their Houſes, took away their Horſes and Carriages, *&c.* and all this without their Leave or Conſent, till 3 *Edw.* I. *c.* 1. an Act was made to relieve them from theſe Oppreſſions under ſevere Penalties. Another Burthen which they lay under, was from the Exactions of *Superiors Aliens*, (*i. e.* where the Abbots and Priors liv'd beyond Sea,) who at their Pleaſure ſet great Taxes upon the Houſes in Subjection to them here, to the Impoveriſhment of the Houſes, and defeating the Ends of their Foundation. This Grievance alſo was provided againſt by a Statute 35 *Edw.* I. forbidding both the Impoſing ſuch Taxes, and alſo the ſending or carrying them beyond Seas, and making void any Donation, which ſhould paſs under any other Seal than the common Seal of the Convent.

TIT. LII.

Diſſolution of Religious Houſes.

Q. WHAT are Knights Templars?

A. They are thus deſcrib'd by Sir *H. Spelman*, *Templarij dicti ſunt, Ordo Militum qui in Templo Hieroſolymis ſedem habuere: id*

id voventes, ut peregrinis tutum redderent iter Hierosolymitanum, venientesque exciperent Hospitio. Institutus autem fuit hic Ordo Anno 1099. For according to the Superstition of those Days, Pilgrimage to the *Holy Land* in Person, was thought to be great Merit, and one of the highest Acts of Devotion and Reverence to our Saviour; and the next to that was to vow Pilgrimages thither on their Sick Beds, in case they recover'd; or if they did not recover, to leave Lands for the Maintenance of a Knight to go thither, and fight against the Infidels. For this also, the Guarding of the *Holy Lands* against Infidels, was undertaken by that Order, as well as the Conducting and Entertaining of Pilgrims.

Q. When was this Order suppress'd?

A. The whole Order was suppress'd by Pope *Clement* the Vth. in a General Council at *Vienna*, *Anno* 1312; many and great Abuses having been charg'd upon them, and particularly that instead of conducting, they betray'd and robb'd the Pilgrims.

Q. What became of the Lands in *England* belonging to the Templars, upon their Suppression?

A. They were given to the Knights *Hospitallers*, by 17 *Edw.* II. as being ordained, instituted, and canoniz'd, for Defence of Christians and Holy Church, *i. e.* for the same Ends that the *Templars* were.

Q. Who were the *Hospitallers*?

A. An Order of Knights, call'd Knights of

of *Rhodes*, or of St. *John* of *Jeruſalem*, commonly call'd *Hoſpitallers*, from receiving and entertaining Pilgrims to the *Holy Land* in their Hoſpital at *Jeruſalem*.

Q. When was this Order ſuppreſs'd?

A. By 32 *Hen.* VIII. *c.* 24. for maintaining the Authority of the Pope, and defaming the King and his People for aboliſhing it.

Q. What were the three general Orders of Religious?

A. All *Religious*, Monks or Canons, were oblig'd to joyn themſelves either to the Order of St. *Bennet*, St. *Baſil*, or St. *Auſtin*; theſe were the principal Orders. Some inſtead of St. *Baſil*, who wrote his Rule for Monks *Anno* 350, reckon St. *Francis*.

Q. What were the *Benedictines*?

A. Thoſe of the Order of St. *Bennet*, who writ his Rule at Mount *Caſſin*, about the Year 516, which was approv'd by the whole Church. Of this Order have been four Emperors, twelve Empreſſes, Six and forty Kings, and One and fifty Queens.

Q. What were the *Cluniacks*?

A. A Reform of St. *Bennet*'s Order, the firſt Inſtitutor of which was Abbot *Berno*, to whom *William* then Duke of *Aquitain*, gave the Place call'd *Clugny* in *Burgundy*, for their firſt Habitation, *Anno* 890.

Q. What were the *Ciſtercians*?

A. An Order that betook themſelves to a ſtrict Obſervance of St. *Bennet*'s Rule. It was firſt inſtituted by *Robert* Abbot of *Moleſme*,

leſme, in a deſart Place call'd *Ciſtercium*, in the Dutchy of *Burgundy*, *Anno* 1098.

Q. What were the *Carthuſians*?

A. An Order founded by a certain learned Man nam'd *Bruno*, in a Deſart Place, call'd *Cartuſia*, in the Dioceſe of *Grenoble* in *France*, *Anno* 1080.

Q. What were the *Præmonſtratenſes*?

A. An Order inſtituted by St. *Norbert* in a Place call'd *Præmonſtratum*, in *Picardy*, according to the Rule of St. *Auguſtine*, *Anno* 1120. This Place was call'd *Præmonſtratum*, becauſe (as it is ſaid) it was foreſhewn or pre-monſtrated to be the Head Seat and Mother Church of this Order by the Bleſſed Virgin, who alſo gave and appointed them their White Habit. This Order was introduced into *England* in King *Stephen*'s Time.

Q. What were the *Gilbertins*?

A. An Order firſt inſtituted in *England*, *Anno* 1148. by Maſter *John Gilbert* of *Sempringham* in *Lincolnſhire*.

Q. How many Kinds of Priors were there?

A. There were two Sorts of Priors, Conventual and Clauſtral: The firſt are they who had no Abbots of their own, but were of the ſame Authority as Abbots, being choſen by the Convent, and the Chief Governors therein. Of this Sort were the Cathedral Priors, and moſt of thoſe of the Order of St. *Auſtin*. The ſecond were they who under the Abbot, and in his Abſence, had the chief Care of the Houſe; and were removable at the Will of the Abbot. Be-

Beſides which there was a third Sort termed *Priors*, namely, they who preſided over Cells ſubordinate to ſome great Abby, and who were placed and diſplaced at the Pleaſure of the Abbot Soveraign. Of this Number were the *Priories Alien*, which were Convents erected by Foreign Monaſteries, in Places where they had Manors or Tithes beſtow'd on them in *England*, and by them ſtock'd with Monks out of their own Houſes, who took Care of their Revenues, and were accountable to them.

Q. When firſt began the Diſſolution of Religious Houſes in *England?*

A. The firſt Diſſolution by King and Parliament was of the leſſer Religious Houſes, by a Statute 27 *Hen.* VIII. *c.* 28. whereby all and ſingular ſuch Monaſteries, Priories, *&c.* with every Thing to them appertaining, as were not above the clear yearly Value of Two Hundred Pounds, were given to the King, to be had and enjoy'd by Him, his Heirs and Aſſigns for ever; in as large and ample Manner, as the *Religious* enjoy'd them. But 'tis to be obſerv'd, that *before* this Time Cardinal *Wolſey* by Licenſe of the King, and Pope *Clement* VII. had obtain'd a Diſſolution of above thirty Religious Houſes, (moſt of them very ſmall) for the Foundation and Endowing of his Colleges at *Oxford* and *Ipſwich*. So that the Pope himſelf had made a Precedent for the Diſſolutions which followed.

Q. Were

Q. Were *all* the Religious Houſes under the yearly Value of Two-hundred Pounds actually diſſolv'd by Virtue of this Statute?

A. No; the King had a Right reſerv'd to Him, of *Continuing* as many as he pleaſed of them by his Letters Patent; and ſome of them were ſo continued, and not diſſolv'd till the ſecond Diſſolution, which was of the larger Religious Houſes, by a Statute 31 *Hen.* VIII. *c.* 13. whereby all that had not been voluntarily ſurrendred to Him before, as many of them had, were at once ſuppreſs'd, and put into the King's Hands with the Scites and Revenues of them; with a particular Clauſe, that ſuch of them as had been † *diſcharg'd* from Payment of Tithes, when in the Hands of the Religious, ſhould be diſcharg'd in as full and ample Manner, when in the Hands of the King, or his *Patentees* of ſuch Lands.

Q. Why was it neceſſary to inſert ſuch a Clauſe?

A. * Becauſe, whereas before the Time of Diſſolution the *Religious* were diſcharg'd from Payment of Tithes, by Bull, Order, or Compoſition, thoſe Diſcharges, and alſo all *Appropriations* would have vaniſhed and ex-

† By Reaſon of the *Diſcharge from Tithes* of Lands which were given to the King by this Act, and which were diſcharg'd in the Hands of the *Religious*; it hath been more ſtrictly enquired what were the Houſes diſſolv'd by *this* Act, than by any other of the Acts of Diſſolution. And becauſe they are of frequent Uſe in Suits concerning *Tithes*, they are added at large in the Appendix. *Numb.* II.

pired with the Spiritual Bodies whereunto they were annex'd, if they had not been continued by this ſpecial Clauſe of Diſcharge; (as it happen'd to thoſe which were diſſolv'd 27 *Hen.* VIII. and 1 *Edw.* VI. for want of ſuch Clauſe, neither of which, as hath been often declar'd, could be aſſiſted in Point of Diſcharge by this Act.)

Q. With what Limitations did the Religious enjoy this Diſcharge?

A. With this, That the Lands were in their *own Occupation*; and conſequently they can be no farther free in the Hands of the *Patentees*. It is therefore neceſſary for him who would take the Benefit of this Privilege, to aver, not barely that he is *ſeized* of the Land, but that it is in his *own Hands* and *Manurance*. But it is otherwiſe with regard to the *King*; whoſe *Farmers* ſhall be diſcharg'd of ſuch Tithes, as the Spiritual Perſons were, becauſe the King cannot *excolere*. And ſo long as the King hath the Freehold, his *Farmers* ſhall have ſuch Privilege; but if he, after having leaſed them, ſhall ſell them, or ſhall grant over the Reverſion, then the Farmers ſhall pay Tithes.

Q. What was the Number and Value of the Monaſteries that were ſuppreſſed by King *Henry* VIII?

A. The Number of the Monaſteries firſt and laſt ſuppreſſed, were Six-hundred and Forty-five, of which Twenty-eight were Mitred, or Parliamentary Abbies, whoſe Abbots

ſat

ſat in the Houſe of Lords. The valued Rents of all the Abby Lands were exceeding low; but the real Worth and Value of them was judg'd at that Time, to amount to above Fifteen-hundred-thouſand Pounds *per Annum*.

Q. Were Hoſpitals given to the Crown at the Diſſolution of Religious Houſes?

A. No Hoſpitals were given to the Crown by the Statute 27 *Hen.* VIII; but in that of 31 *Hen.* VIII. they are particularly mention'd with Monaſteries, Abbathies, Priories, *&c.* But it is ſaid to have been reſolv'd in the * Caſe of the Lord *Cheney*, 24 *Eliz.* "That "no Hoſpitals but only Religious and Ec- "cleſiaſtical, are within this Statute." And further, "That if, upon the Foundation of "any Lay Hoſpital, or after, it was ordain'd, "that one or more Prieſts ſhould be main- "tain'd within the ſaid Hoſpital to celebrate "Divine Service to the Poor, and to pray for "the Soul of the Founder, and all Chriſtian "Souls, or the like; and that the Poor of "ſuch Hoſpitals ſhould do the ſame; yet "ſuch an Hoſpital was not within the ſaid "Statutes, for it is *Lay* and not *Religious*; "and all, or the greateſt Part of ancient Lay "Hoſpitals, were founded or ordain'd after "the like Sort; and the Makers of thoſe "Statutes never intended to overthrow Works "of Charity, but only to take away the "Abuſe." To this 'tis added, as a further Reſolution in the ſame Caſe, "That no "Hoſpital was given to the King by the

"Sta-

" Statute 37 *Hen.* VIII. but in two Caſes, *viz.* " Where the Donors, Founders, or Patrons, " had enter'd and expell'd the Prieſts, Wardens, *&c.* or where King *Henry* VIII. by " Commiſſion, according to that Act, ſhould " enter and ſeize the ſame; but that *that* was " determin'd by the Death of the ſaid King." And, finally it was reſolv'd, " That the " Statute 1 *Edw.* VI. extended not to any " Hoſpital whatſoever, either Lay or Religious." But (notwithſtanding this) in the Caſe of *Pitts* and *James*, 12 *Jac.* I. * it was reſolv'd, that an Hoſpital founded for certain poor Perſons, to ſerve God and to pray for the Souls of the King and the Founder, with their Progenitors, Anceſtors, and Heirs, was a *Superſtitious Foundation*, and, as ſuch, given to the King by the *Deſign* and *Intention* of the Statute 1 *Edw.* VI. tho' Hoſpitals are not particularly *mention'd* in that Statute.

Q. What other Acts of Diſſolution were there beſides the forementioned Acts 27 *Hen.* VIII. *c.* 28. and 31 *Hen.* VIII. *c.* 13. for the Diſſolution of Monaſteries and Abbies?

A. An Act paſſed 37 *Hen.* VIII. *c.* 4. for Diſſolution of *Colleges*, *Free Chapels*, *Chantries*, *Hoſpitals*, *Fraternities*, *Gilds*, and *Stipendiary Prieſts*. Alſo another † 1 *Edw.* VI.

† 'Tis obſerv'd by Biſhop *Burnet* upon the laſt of theſe Statutes, that the Entry in the Journal of the Houſe of Peers, is, that the Bill was *communi omnium Procerum aſſenſu Concluſa, except' Archiep. Cant. Epiſcopis London' Norwicen' Hereford' Wigorn' Ciceſtren' Dunelmen' Elien'*. Where the

c. 14. for the Diſſolution of ſuch as were not ſeized before. The Deſign of which Acts was to take away *Superſtitious Uſes*, and Promiſes were given, that the Revenues ſhould be applied to better Purpoſes, as Schools, Hoſpitals, *&c.* but little of this was perform'd.

Q. To what Uſes were the Lands of the diſſolv'd Monaſteries applied by King *Henry* the VIIIth?

A. The greateſt Part of them were given, or ſold at eaſy Rates, to the Nobility and Gentry, who were oblig'd for ſome Time to retain the wonted Hoſpitality. With the reſt, he founded ſix Biſhopricks, endow'd Deanries, Prebends, and other Offices in fourteen ſeveral Sees, and founded *Chriſt-Church* Hoſpital, *Trinity* College in *Cambridge*, Profeſſors in both Univerſities, and many Grammar Schools. He had laid other great Deſigns, but accidentally fell ſhort of them.

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the Diſſent of the Popiſh Biſhops is eaſily accounted for, *viz.* becauſe they deſired that the Foundations might be continued as they then ſtood. But Archbiſhop *Cranmer* in his Diſſent, acted upon a very different Motive, *viz.* the Hopes he had, that if theſe could be ſaved out of Lay Hands till the King was of Age, he might be perſuaded to convert them to the bettering of the Condition of the poor Parochial Clergy, who were now diſappointed of all *Hopes* of being better'd by other Means, when they ſaw the Impropriations convey'd apace into Lay Hands.

APPENDIX.

APPENDIX.

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A TABLE *of the Inſtruments Antient and Modern, which are in the* Appendix *to the* CODEX; *inſerted, that ſuch as have Occaſion, may know where to have Recourſe for them.*

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Monaſteries of the annual Value of 200 l. *or upwards diſſolv'd by Stat.* 31 Hen. 8. *and by that Means capable of being diſcharg'd of Tithes.* Vide Tit. LI, LII.

ABBREVIATIONS.

Ab. Abbey, Pr. Priory, C. *Auſt.* Canons of St. *Auſtin*, Mon. Nig. Black Monks, Wh. C. White Canons, *Ben. Benedictines*, *Gilb. Gilbertines*, *Præm. Præmonſtratenſes*, *Carth. Carthuſians*, *Mon. Moniales*, *Clun. Cluniacks*, *Ciſt. Ciſtertians*, T. in the Time of, *Cir. An.* about the Year.

BERKS.

Monaſteries.	*Order.*	*Founded.*	*l.*	*s.*	*d.*
READING.	Ben.	*Temp.* H. 1.	1938	14	03
Buſleſham *Ab.*	C. Auſt.	13 Edw. III.	0285	00	00
Abbington *Ab.*	Ben.	*An.* 720.	1876	10	09

BEDFORD.

Newnham *Pr.*	C. Auſt.	*T.* Hen. I.	293	15	11
Elmeſton *Ab.*	Ben.	*T.* W. Conq.	284	12	11
Wardon *Ab.*	Ciſt.	*An.* 1139.	389	16	06
Chickſand *Pr.*	*Wh.* C. Gilb.	*T.* W. Rufus	212	03	05
Dunſtable *Ab.*	C. Auſt.	*T.* Hen. I.	844	13	03
Wooburn *Ab.*	Ciſt.	*T.* John.	391	18	02

BUCKS.

Aſhrug *Coll.*	C. Auſt.	*T.* Edw. I.	416	16	04
Notely *Ab.*	C. Auſt.	*An.* 1112.	437	06	08
Miſſenden *Ab.*	Ben.	*An.* 1293.	261	14	06

APPENDIX.

CANTABR.

Monaſteries.	*Order.*	*Founded.*	*l.*	*s.*	*d.*
Thorney *Ab.*	Ben.	*An.* 972.	411	12	11
Barewel *Pr.*	C. Auſt.	*An.* 1092.	256	11	10

CESTR.

St. Werburge *Ab.*	Ben.	*An.* 1095.	1003	05	11
Combermeer *Ab.*	Ciſt.	*An.* 1134.	225	09	07

CORNUB.

Bodmin *Pr.*	C. Auſt.	*An.* 936	270	00	11
Launceſton *Ab.*	C. Auſt.	*T.* Will. Conq.	354	00	11
St. Germans *Ab.*	C. Auſt.	*T. K.* Ethelſtane.	243	08	00

CUMBR.

Carliſle *Pr.*	C. Auſt.	*T.* Will. Ruf.	418	03	04
Holmcoltrom *Ab.*	Ciſt.	*An.* 1135.	427	19	03

DERB.

Darley *Ab.*	C. Auſt.	*T.* Hen. II.	258	14	05

DEVON.

Ford *Ab.*	Ciſt.	*An.* 1133.	374	10	06
Newnham *Ab.*	Ciſt.	*Circ. An.* 1246.	227	07	08
Dinkeſwel *Ab.*	Ciſt.	*An.* 1201.	294	18	06
Hertland *Ab.*	C. Auſt.	*T.* Hen. II.	306	03	02
Torre *Ab.*	Præm.	*T.* Ric. I.	396	00	11
Buckfaſt *Ab.*	Ciſt.	*T.* Hen. II.	466	11	02
Plimpton *Ab.*	Ciſt.	*T.* Edw. II.	241	17	09
Taveſtock *Ab.*	Ben.	*An.* 961.	902	05	07
Exon *Pr.*	Clun.	*T.* Hen. I.	502	12	09

DORSET.

Abbotsbury.	Ben.	*Circ. An.* 1016.	390	19	02
Middleton *Ab.*	Ben.	*by K.* Ethelſtan.	538	13	11
Tarrent *Ab.*	Ciſt.	*by* Hen. III.	214	07	09
Shafton *Ab.*	Ben.	*An.* 941.	1166	08	09
Cerne *Ab.*	Ben.	*T. K.* Edgar.	515	17	10
Sherburn *Ab.*	Ben.	*Circ. An.* 370.	682	14	07

DUNELM.

St. Cuthbert *Ab.*	Ben.	*Circ. An.* 842.	1366	10	09
Tinmouth *Pr.*	Ben.		397	11	05

ESSEX.

APPENDIX.

ESSEX.

Monaſteries.	*Order.*	*Founded.*	*l.*	*s.*	*d.*
Berking *Ab.*	Ben.	*An.* 680.	862	12	05
Stratford Langthorn *Ab.*	Ciſt.	*An.* 1135.	511	16	03
Waltham *Ab.*	*C.* Auſt.	*Circ. An.* 1060.	900	04	03
Walden *Ab.*	Ben.	*An.* 1136.	372	18	01
St. Oſwith *Ab.*	*C.* Auſt.	*An.* 1120.	677	01	02
Colcheſter *Ab.*	*C.* Auſt.	*T.* Hen. I.	523	17	00

GLOUCESTER.

Briſtol *Ab.*	*C.* Auſt.	*T.* Hen. I.	670	13	11
Hayles *Ab.*	Ciſt.	*An.* 1246.	357	07	08
Winchcomb *Ab.*	Ben.	*An.* 787.	759	11	09
Tewkesbury *Ab.*	Ben.	*An.* 715	1598	01	05
Cirenceſter *Ab.*	*C.* Auſt.	*T.* Hen. I.	1051	07	01
Kingſwood *Ab.*	Ciſt.	*An.* 1139.	244	11	02
Glouceſter *Ab.*	Ben.	*An.* 680.	1946	05	09
Lanthony *Pr.*	*C.* Auſt.	*An.* 1136.	648	19	11

HANTS.

St. Swithins Winton *Ab.*	Ben.	*An.* 634.	1507	17	02
Hyde *Ab.*	Ben.	*by K.* Alfred.	865	18	00
Wherwell *Ab.*	Ben.	*T. K.* Edgar.	339	08	07
Romſey *Mon.*	Ben.	*An.* 907.	393	10	10
Twinham *Pr.*	*C.* Auſt.	*Ante* 1042.	312	07	00
Belloloco *Ab.*	Ciſt.	*An.* 1024.	326	13	02
Southwick *Pr.*	*C.* Auſt.	*T.* Hen. I.	257	04	04
Tichfield *Ab.*	Præm.	*T.* Hen. III.	249	16	01

HERTFORD.

St. Albans *Ab.*	Ben.	*An.* 755.	2102	07	01

HUNTS.

St. Neots *Ab.*	Ben.	*Circ. T.* Hen. I.	241	11	04
Ramſey *Ab.*	Ben.	*An.* 969.	1716	12	04

KANC.

St. Auſtin's *prope* Cant. *Ab.*	Ben.	*An.* 605.	1413	04	11
Ledis *Pr.*	*C.* Auſt.	*An.* 1119.	362	07	07
Feverſham *Ab.*	Clun.	*An.* 1147.	286	12	06
Boxley *Ab.*	Ciſt.	*An.* 1144.	204	04	11
Roffen *Ab.*	Ben.	*An.* 600.	486	11	05

APPENDIX.

Monaſteries.	*Order.*	*Founded.*	*l.*	*s.*	*d.*
Malling *Ab.*	Ben.	*by K.* Edmund.			
Dertford *Ab.*	C. Auſt.	46 Edw. III. *per ipſum R.*	380	00	00
		LANC.			
Whalley *Ab.*	Ciſt.	*An.* 1172.	321	09	01
		LEIC.			
Leiceſter *Ab.*	C. Auſt.	*An.* 1143.	951	14	05
Croxden *Ab.*	Præm.	*Circ. T.* Ric. I.	385	00	10
Launda *Ab.*	C. Auſt.	*T.* Will. Ruf.	399	03	03
		LINCOLN.			
Lincoln *St.* Catharine *Pr.*	Gilb.	*T.* Hen. II.	202	05	00
Kirkſtead *Ab.*	Ciſt.	*An.* 1139.	286	02	07
Reveſley *Ab.*	Ciſt.	*An.* 1142.	287	02	04
Thornton *Ab.*	C. Auſt.	*An.* 1139.	594	17	10
Barney *Ab.*	Ben.	*An.* 712.	366	06	01
Croyland *Ab.*	Ben.	*An.* 716.	1803	15	10
Spalding *Ab.*	Ben.	*An.* 1052.	761	08	11
Sempringham *Ab.*	Gilb.	*An.* 1148.	317	04	01
Epworth *Mon.*	Carth.	10 Ric. II.	237	15	02
		LOND. and *MIDD.*			
St. John Jeruſalem *Pr.*		*An.* 1100.	2385	12	08
St. Bartholo. Smithfield.	C. Auſt.	*An.* 1102.	653	15	00
St. Mary Biſhopſgate *Pr.*		*An.* 1187.	478	06	06
Clerkenwell *Pr.*	Ben.	*T. K.* Steph.	262	19	00
London *Minors.*	Ben.	*T.* Edw. I.	318	08	05
Weſtminſter *Ab.*	Ben.	*T. K.* Edgar.	3471	00	02
Sion *Ab.*	C. Auſt.	*by* Hen. V.	1731	08	04
London, *a Houſe of*	Carth.	*T.* Edw. III.	642	00	04
St. Clare *without* Aldgate *Mon.*		*An.* 1292.	418	08	05
St. Mary *Charter-Houſe.*	Carth.	*An.* 1379.	736	02	07
St. *John Holiwel.*	Mon. Nig.	*An.* 1318.	347	01	03
St. Mary Eaſt Smithfield *Ab.*	Ciſt.	34 Edw. III.	602	11	10

NORTHFOL.

APPENDIX.

NORTHFOL.

Monaſteries.	*Order.*	*Founded.*	*l.*	*s.*	*d.*
Thetford *Ab.*	Clun.	*An.* 1103.	312	14	04
Wymundham *Ab.*	Ben.	*An.* 1139.	211	16	06
Hulmo *Ab.*	Ben.	*by K.* Canutus.	583	17	00
Weſtderham *Ab.*	Præm.	*T.* Hen. II.	228	00	00
Walſingham *Ab.*	*C.* Auſt.	*c. T. K.* Steph.	391	11	06
Caſtle-Acre *Ab.*	Clun.	*An.* 1090.	306	11	04
Weſt-Acre *Ab.*	Clun.	*T.* W. Rufus.	260	13	07

NORTHTON.

Burgi *St.* Petri *Ab.*	Ben.	*by* Roſere R. Merc.	1721	14	00
Pipewel *Ab.*	Ciſt.	*An.* 1143.	286	11	08
St. Andrews *Pr.*	Clun.	*An.* 1067.	263	07	01
Sulby *Ab.*	Præm.	*T. K.* Steph.	258	08	05

NOTTS.

Lenton *Pr.*	Clun.	*T.* Hen. I.	329	05	10
Thurgarton *Pr.*	*C.* Auſt.	*T.* Hen. I.	259	09	04
Welbeck *Ab.*	*C.* Auſt.	*T. K.* Steph.	249	06	03
Warſop *Pr.*	*C.* Auſt.		239	10	05
Bella Valla *Pr.*	Carth.	*c.* 16 Edw. III.	227	08	00
Newſteed *Pr.*	*C.* Auſt.	*T.* Edw. III.	219	18	08

The Two laſt are under Value in Mr. *Dugdale*, but thus *per Speed.*

NORTHUMBR.

Tinmouth, *a Cell to St.* Albans, *a Nunnery.*			511	04	01

OXON.

Godſtow *Ab.*	Ben.	*T. K.* Steph.	274	05	10
Eyneſham *Ab.*	Ben.	*by K.* Ethelred.	441	12	02
Oſney *Ab.*	*C.* Auſt.	*T.* Hen. I.	654	10	02
Thama *Ab.*	Ciſt.	*T.* Hen. I.	256	13	11
Oxford *Pr.* *per* Speed, *fund. ante Conq.*			224	04	08
Dorcheſter *per eund. Ab.*	*C.* Auſt.	*An.* 635.	219	12	00

SALOP.

Haghmond *Ab.*	*C.* Auſt.	*An.* 1100.	259	13	07
Lilleſhull *Ab.*	*C.* Auſt.	*per* A. d'Elfleda, R. Merciæ.	229	03	01
Wigmore *Ab.*	*C.* Auſt.	*An.* 1172, *per Speed*	267	02	10

APPENDIX.

Monaſteries.	*Orders.*	*Founded.*	*l.*	*s.*	*d.*
Wenlock *Pr.*	Clun.	*An.* 1181. *vel antea*	401	00	07
Salop *Ab.*	*C.* Auſt.	*An.* 1081. *per Speed.*	615	04	03
Hales Owen *Ab.*	Præm.	*T. K.* John.	337	15	06
		SOMERSET.			
Glaſſenbury *Ab.*	Ben.	*Circ. An.* 300.	3311	07	04
Brewton *Ab.*	*C.* Auſt.	*Circ. T.* W. Conq.	439	06	08
Henton *Pr.*	Carth.	*T.* Hen. III.	248	19	02
Witham *Pr.*	Carth.	*by* Hen. II.	215	15	00
Taunton *Pr.*	*C.* Auſt.	*T.* Hen. I.	286	08	10
Bathon *Ab.*	Ben.	*T.* Hen. III.	617	02	03
Keyneſham *Ab.*	*C.* Auſt.	*T.* Hen. I.	419	14	03
Michelney *Ab.*	Ben.	*An.* 740.	447	04	11
Buckland *Pr.*	Ciſt.	*T.* Edw. I.	223	07	04
		STAFF.			
Dela Cres *Ab.*	Ciſt.	*An.* 1153.	227	05	00
Burton *ſuper* Trent *Ab.*	Ben.	*T. K.* Eadred.	267	14	03
Croxden *Ab.*	Ciſter.				
		SUFFOLK.			
St. Edmundsbury *Ab.*	Ben.	*An.* 1020.	1659	13	11
Butley *Ab.*	*C.* Auſt.	*An.* 1171.	318	17	02
Sibeton *Ab.*	Ciſt.	*An.* 1150.	230	15	07
Ixworth *Pr.*	*C.* Auſt.	*T.* Will. Conq.	280	09	05
		SURREY.			
Merton *Pr.*	*C.* Auſt.	*An.* 1414.	957	19	05
Shene *Pr.*	Carth.	*An.* 1414.	777	12	00
Chertſey *Ab.*	Ben.	*An.* 666.	659	15	08
Newark *Pr.*			258	11	11
St. Mary Overs *Ab.*	*C.* Auſt.	7 Hen. I.	625	06	06
Bermundſey *Ab.*	*C.* Auſt.	7 Hen. I.	474	14	04
		SUSSEX.			
Lewis *Ab.*	Clun.	*T.* W. Ruf.	920	04	06
Roberts-Bridge *Abbey.*	Ciſt.	*T.* Hen. II.	248	10	06
Battaile *Ab.*	Bl. Monks.	*An.* 1066.	987	00	11
		WARW.			
Combe *Ab.*	Ciſt.	*T. K.* Steph.	311	15	01
Kenelworth *Ab.*	*C.* Auſt.	*T.* Hen. I.	538	19	00

Meryval

Monasteries.	*Order.*	*Founded.*	*l.*	*s.*	*d.*
Meryval *Ab.*	Cist.	*An.* 1148.	254	01	08
Nuneaton *Mon.*	Ben.	*T.* Hen. II.	253	14	05

WILTS.

Malmsbury *Ab.*	Ben.	*Circ. An.* 670.	803	17	07
Bradenstock *Pr.*	*C.* Aust.	*T.* Will. Conq.	212	19	03
Edington *Pr.*	*C.* Aust.	*An.* 1352.	442	19	07
Ambresbury *Ab.*	Ben.	*An.* 1177.	494	15	02
Wilton *Ab.*	Ben.	*T. K.* Ethelwolf.	601	01	01
Faireley, *a Cell to* Lewis.	Clun.	*An.* 1125.	217	00	04
Laycock *Ab.*	*C.* Aust.	*An.* 1232, *per* Speed	203	12	03

WIGORN.

Malverne *Ab.*	Ben.	*An.* 1083.	308	01	03
Evesham *Ab.*	Ben.	*T. K.* Offa.	1183	12	09
Persshore *Ab.*	Cist.		643	04	05
Hales Owen *Ab.*	Præm.	*T. K.* John.	282	13	04
Bordesly *Ab.*	Cist.	*An.* 1138.	388	01	01

EBORUM.

St. Mary Ebor. *Ab.*	Ben.	2 Will. Ruf.	1550	07	00
Selby *Ab.*	Ben.	*T.* Will. Conq.	720	12	10
Kirkstal *Ab.*	Cist.	*An.* 1147.	329	02	11
De Rupe *Ab.*	Cist.	*An.* 1147.	224	02	05
Monks Burton *Ab.*	Clun.	*Circ. An.* 1186.	239	03	06
Nostel *Ab.*	*C.* Aust.	*T.* Hen. I.	492	18	02
Pomfrait *Ab.*	Clun.	*T.* Will. Conq.	237	14	08
Gisbourn *Ab.*	*C.* Aust.	*T. K.* Steph.	628	03	04
Whitby *Ab.*	Ben.	*T.* Will. Conq.	437	02	09
Montegratiæ *Ab.*	Carth.	*Circ. An.* 1396.	323	02	10
Newburge *Pr.*	*C.* Aust.	*An.* 1145.	367	08	03
Belland *Ab.*	Cist.	*An.* 1134.	238	09	01
Kirkham *Ab.*	*C.* Aust.	*T.* Hen. I.	269	05	09
Melsa *Ab.*	Cist.	*An* 1136.	299	06	04
Brilington.	*C.* Aust.	*T.* Hen. I.	547	06	11
Walton *Ab.*	Gilb.	*T. K.* Steph.	360	16	10
Bolton in Craven *Pr.*	*C.* Aust.	*T.* Hen. I.	212	03	04
Rival *Ab.*	Cist.	*An.* 1132.	278	10	03
Jerval *Ab.*	Cist.	*T. K.* Steph.	234	18	05
Furnes *Ab.*	Cist.	*An.* 1127	805	16	05

APPENDIX.

Monasteries.	*Order.*	*Founded.*	*l.*	*s.*	*d.*
De Fontibus.	Cist.	*An.* 1132.	998	06	08
Warter *Pr.*	C. Aust.	*T.* Hen. I.	221	03	10
Richal, *per* Speed.			351	14	06
Old Maulton *Ab.*		*T. K.* Steph. *per* Speed.	257	07	00
St. Michael *near* Hull.	Carth.	*An.* 1377.	231	17	03

WALLIA.

Valle de Sancta Cruce *Com.* Denbeigh.	Cist.	*T.* Edw. I.	214	03	05
Strata Florida Cardiganshire.	Cist. *or* Clun.	*T.* Will. Conq.	1226	06	00

NUMB. III.

Form of a Terrier.

A True Terrier of all the Glebe Lands, Meſſuages, Tenements, Portions of Tithes, and other Rights belonging to the Rectory and Pariſh-Church of *A.* in the County of *N.* and Dioceſe of *L.* and now in the Uſe and Poſſeſſion of Mr. *B. C.* Rector there, or his Tenants, taken, made, and renewed according to the old Evidences, and Knowledge of the antient Inhabitants, this ——— Day of ——— in the Year of our Lord Chriſt, and exhibited in the Primary Viſitation of the Right Reverend Father in God, *D.* Lord Biſhop of *L.* holden at ———

Imprimis, The Site of the Rectory —— (*ſpecifying the Quantity, Houſes, Barns, and other Buildings thereon, Orchards, Gardens*, &c. *belonging thereto.*)

Item, One incloſed Piece of Paſture containing —— [*and ſo go on to enumerate the ſeveral Pieces of Glebe, deſcribing them particularly by their ſeveral Names and preſent Abuttals every Way.*]

Item, There is alſo within the ſaid Pariſh a little Manor belonging to the Rectory, to which ſeveral Free and Copy Tenants owe Suit and Service.

Item, The ſaid Rectory and Church of *A.* is poſſeſſed of the following Penſions and Portions of Tithes out of the Pariſh:

1. A Penſion of *6 s. 8 d. per Ann.* due from the Rectory of *B.*

2. The Tithes of ——— in the common Fields of *C.*

Item, All Tithes within the ſaid Pariſh of *A.* are paid to the Rector, or his Tenant, in their proper

Kinds, and there are no Cuſtoms in the Pariſh, but only 2 *d.* for every Cow inſtead of Tithe Milk, [or the like.]

If it be a Vicarage, after deſcribing the Houſe and Glebe, as before.

Item, There is yearly paid to the Vicar the Sum of —— and —— Comb of Wheat at the Feaſt of the Annuciation, by the Impropriator, or his Tenants.

Item, All the great Tithes ariſing out of —— now in the Occupation of *N. O.* belong to the Vicar; as alſo the Tithes of Wool, Lamb, Calves, Wood, Turnips, and all other Tithes and Eccleſiaſtical Duties throughout the whole Pariſh, except the Tithes of Corn and Hay.

The Glebe, Tithes and Profits of the Rectory (or Vicarage) of *A.* are worth, at the improv'd Value, *Communibus annis*, about —— *per Annum.*

At the Bottom, or on the Back of the Terrier of the Rectory or Vicarage Lands, &c. thus drawn up, go on to deſcribe the other Church and Town Lands or Houſes, in this or the like Manner:

Houſes, Lands, *&c.* belonging to the Pariſh-Church of *A.* the Rents whereof are yearly receiv'd by the Church-wardens, and expended about the Repairs or Ornaments of it, and other Charges belonging to their Office, *viz.*

Imprimis, One Houſe with the Home-ſtall, containing about three Acres, abutting, *&c.* now in the Occupation of *C. D.* at the yearly Rent of 5 *l.*

Item, One Piece of Meadow, containing 4 Acres, abutting, *&c.* now in the Occupation of *E. F.* at the yearly Rent of

There are alſo belonging to the ſaid Pariſh:

1. Three ſmall Cottages, ſituate near the Church, inhabited at preſent by *J. N. M. R. A. P.* poor Widows.

2. Two Acres of Land in ——— Furlong abutting, *&c.* in the Occupation of *G. G.* at the yearly Rent of twenty Shillings.

3. In Money the Sum of —— as a Pariſh Stock, now in the Hands of *L. M.* upon Mortgage.

The Uſe of which Money, and the Rents of the laſt mentioned Lands, are applied by the Churchwardens and Overſeers to the Relief of the Poor, and defraying other Pariſh Charges.

In the ſaid Town of *A.* is alſo a Free-School, founded by *F. G.* late of *L.* Merchant, about the Year —— endow'd with a Dwelling-houſe, and 20 *l. per Annum* Stipend to the Maſter, which Stipend is a Rent-charge iſſuing out of the Manor of *G.* in the County of ———

There is alſo in the ſaid Town an Hoſpital, founded and endowed by the Lady *W.* about the Year ——— for ſix poor Men and ſix poor Women, who have each a convenient Apartment, a blue Gown every Year, and 1 *s. per* Week; who are thus maintain'd out of certain Lands lying in *G. H.* in this County, in the Hands of *A. B. C. D. E. F.* and other Feoffees in Truſt.

In Teſtimony of the Truth of the above (or within) mentioned Particulars, we the Miniſter, Churchwardens, and chief Inhabitants, have ſet our Hands, the Day and Year above-written.

A. B. Rector.
C. D. } Church-wardens.
E. F. }
G. H. }
J. K. } Chief Inhabitants.
L. M. }

APPENDIX.

A true and perfect NOTE *of all and ſingular the Goods, Books, Ornaments and Utenſils belonging to the Pariſh and Pariſh-Church of* A. *in the County of* B. *and Dioceſe of* N.

Imprimis, ONE ſilver Flaggon, weighing about 50 Ounces.

Item, One Chalice, with the Cover, double gilt, weighing about 16 Ounces.

Item, One Carpet for the Communion-Table of Purple Cloth.

Item, One Pulpit-Cloth and Cuſhion of the ſame.

Item, One fine Linen-Cloth and one Napkin, for the Communion-Table.

Item, One large Surplice of Holland.

Item, Two Common-Prayer Books.

Item, One large Bible of the laſt Tranſlation.

Item, The Book of Homilies.

Item, Four Bells with their Frames, the leaſt thought to weigh about —— Hundred; the Second, about —— Hundred; the Third, about —— Hundred; and the Biggeſt about —— Hundred.

C. D.
E. F. } Church-wardens.

NUMB. IV.

NUMB. IV.

An ADMONITION *to all ſuch as ſhall intend hereafter to enter the State of Matrimony, godly and agreeably to* LAWS.

Firſt, THAT they contract not with ſuch Perſons as be hereafter expreſſed, nor with any of like Degree, againſt the Law of God, and the Laws of the Realm.

Secondly, That they make no ſecret Contracts, without Conſent or Counſel of their Parents or Elders, under whoſe Authority they be, contrary to God's Laws, and Man's Ordinances.

Thirdly, That they contract not anew with any other, upon Divorce and Separation made by the Judge for a Time, the Laws yet ſtanding to the contrary.

None ſhall come near to any of the Kindred of his Fleſh to uncover their Shame: I am the Lord. Lev. 18. 6.

A Man may not marry his.

	Secundus gradus in linea recta aſcendente.	
Con.	Avia.	1 *Grandmother.*
af.	Avia relicta.	2 *Grandfather's Wife.*
af.	Proſocrus, vel ſocrus magna.	3 *Wife's Grandmother.*
	Secundus gradus inæqualis in linea tranſverſali aſcendente.	
Con.	Amita.	4 *Father's Siſter.*

A Man

APPENDIX.

A Man may not marry his

Con.	Matertera.	5	*Mother's Siſter.*
af.	Patrui relicta.	6	*Father's Brother's Wife.*
af.	Avunculi relicta.	7	*Mother's Brother's Wife.*
af.	Amita uxoris.	8	*Wife's Father's Siſter.*
af.	Matertera uxoris.	9	*Wife's Mother's Siſter.*
	Primus gradus in linea recta aſcendente.		
Con.	Mater.	10	*Mother.*
af.	Noverca.	11	*Stepmother.*
af.	Socrus.	12	*Wife's Mother.*
	Primus gradus in linea recta deſcendente.		
Con.	Filia.	13	*Daughter.*
af.	Privigna.	14	*Wife's Daughter.*
af.	Nurus.	15	*Son's Wife.*
	Primus gradus æqualis in linea tranſverſali.		
Con.	Soror.	16	*Siſter.*
af.	Soror uxoris.	17	*Wife's Siſter.*
af.	Fratris relicta.	18	*Brother's Wife.*
	Secundus gradus in linea recta deſcendente.		
Con.	Neptis ex filio.	19	*Son's Daughter.*
Con.	Neptis ex filia.	20	*Daughter's Daughter.*
af.	Pronurus, *i. e.* relicta nepotis ex filio.	21	*Son's Son's Wife.*
af.	Pronurus, *i. e.* relicta nepotis ex filia.	22	*Daughter's Son's Wife.*
af.	Privigni filia.	23	*Wife's Son's Daughter.*
af.	Privignæ filia.	24	*Wife's Daughter's Daughter.*

A Man

APPENDIX.

A Man may not marry his

	Secundus gradus inæqualis in linea tranſverſali deſcendente.		
Con.	Neptis ex fratre.	25	*Brother's Daughter.*
Con.	Neptis ex ſorore.	26	*Siſter's Daughter.*
af.	Nepotis ex fratre relicta.	27	*Brother's Son's Wife.*
af.	Nepotis ex ſorore relicta.	28	*Siſter's Son's Wife.*
af.	Neptis uxoris ex fratre.	29	*Wife's Brother's Daughter.*
af.	Neptis uxoris ex ſorore.	30	*Wife's Siſter's Daughter.*

A Woman may not marry with her

	Secundus gradus in linea recta aſcendente.		
Con.	Avus.	1	*Grandfather.*
af.	Aviæ relictus.	2	*Grandmother's Huſband.*
af.	Proſocer, vel ſocer magnus.	3	*Husband's Grandfather.*
	Secundus gradus inæqualis in linea tranſverſali aſcendente.		
Con.	Patruus.	4	*Father's Brother.*
Con.	Avunculus.	5	*Mother's Brother.*
af.	Amitæ relictus.	6	*Father's Siſter's Huſband.*
af.	Materteræ relictus.	7	*Mother's Siſter's Huſband.*
af.	Patruus mariti.	8	*Husband's Father's Brother.*
af.	Avunculus mariti.	9	*Husband's Mother's Brother.*

A Wo-

APPENDIX.

A Woman may not marry with her

	Primus gradus in linea recta aſcendente.		
Con.	Pater.	10	*Father.*
af.	Vitricus.	11	*Stepfather.*
af.	Socer.	12	*Husband's Father.*
	Primus gradus in linea recta deſcendente.		
Con.	Filius.	13	*Son.*
af.	Privignus.	14	*Husband's Son.*
af.	Gener.	15	*Daughter's Husband.*
	Primus gradus æqualis in linea tranſverſali.		
Con.	Frater.	16	*Brother.*
af.	Levir.	17	*Husband's Brother.*
af.	Sororis relictus.	18	*Siſter's Husband.*
	Secundus gradus in linea recta deſcendente.		
Con.	Nepos ex filio.	19	*Son's Son.*
Con.	Nepos ex filia.	20	*Daughter's Son.*
af.	Progener, *i. e.* relictus neptis, ex filio.	21	*Son's Daughter's Husband.*
af	Progener, *i. e.* relictus neptis, ex filia.	22	*Daughter's Daughter's Husband.*
af.	Privigni filius.	23	*Husband's Son's Son.*
af.	Privignæ filius.	24	*Husband's Daughter's Son.*
	Secundus gradus inæqualis in linea tranſverſali deſcendente.		
Con.	Nepos ex fratre.	25	*Brother's Son.*
Con.	Nepos ex ſorore.	26	*Siſter's Son.*
af.	Neptis ex fratre relictus.	27	*Brother's Daughter's Husband.*

A Woman may not marry with her

af.	Neptis ex ſorore relictus.	28	*Siſter's Daughter's Husband.*
af.	Leviri filius, *i. e.* nepos mariti ex fratre.	29	*Husband's Brother's Son.*
af.	Gloris filius, *i. e.* nepos mariti ex ſorore.	30	*Husband's Siſter's Son.*

Set forth by the Moſt Reverend Father in God, Matthew Parker, *Archbiſhop of* Canterbury, *Primate of* England *and Metropolitan,* 1563.

I. IT is to be noted, That thoſe Perſons which be in the direct Line aſcendant and deſcendant, cannot marry together, although they be never ſo far aſunder in Degree.

II. It is alſo to be noted, That Conſanguinity and Affinity (letting and diſſolving Matrimony) is contracted as well in them and by them which be of Kindred by the one Side, as in and by them which be of Kindred by both Sides.

III. *Item,* That by the Laws, Conſanguinity and Affinity (letting and diſſolving Matrimony) is contracted as well by unlawful Company of Man and Woman, as by lawful Marriage.

IV. *Item,* In contracting between Perſons doubtful, which be not expreſſed in this Table, it is moſt ſure, firſt to conſult with Men learned in the Laws, to underſtand what is lawful, what is honeſt and expedient, before the Finiſhing of their Contracts.

V. *Item,* That no Parſon, Vicar or Curate, ſhall ſolemnize Matrimony out of his or their Cure, or Pariſh-Church or Chapel, and ſhall not ſolemnize the ſame in Private Houſes, nor lawleſs and exempt Churches, under the Pains of the Law forbidding

the ſame. And that the Curate have their Certificates; when the Parties dwell in divers Pariſhes.

VI. *Item*, The Banns of Matrimony ought to be openly denounced in the Church by the Miniſter three ſeveral *Sundays* or *Feſtival Days*, to the End that they who will and can alledge any Impediment, may be heard, and that Stay may be made till farther Trial, if any Exception be made there againſt it, upon ſufficient Caution.

VII. *Item*, Who ſhall maliciouſly object a frivolous Impediment, againſt a lawful Matrimony, to diſturb the ſame, is ſubject to the Pains of the Law.

VIII. *Item*, Who ſhall preſume to contract in the Degrees prohibited (tho' he do it ignorantly) beſides that the Fruit of ſuch Copulation may be judged unlawful, is alſo puniſhable at the Ordinary's Diſcretion.

IX. If any Miniſter ſhall conjoin any ſuch, or ſhall be preſent at ſuch Contracts making, he ought to be ſuſpended from his Miniſtry for three Years; and otherwiſe to be puniſhed according to the Laws.

NUMB. V.

NUMB. V.

Tithes in LONDON.

THE Payment of Tithes in the City of *London* and Liberties thereof, is regulated and enforced by particular Statutes; the firſt of which is 37 *Hen.* VIII. *cap.* 12. by which, purſuant to a Decree by the Archbiſhop of *Canterbury*, and divers others to whom the Matter was referred, it is enacted, That the Citizens and Inhabitants of the ſaid City of *London*, ſhall yearly pay Tithe after the Rate of ſixteen Pence Half-penny for all and every Houſe and Houſes, Shops, Ware-houſes, Cellars, Stables, and every of them, of the Rent of 10*s.* by the Year; two Shillings and nine Pence for every Houſe, *&c.* of 20*s.* Rent, and ſo above in Proportion, aſcending from ten Shillings to ten Shillings. Houſes leaſed without Rent by Reaſon of Fine, or in the Occupation of the Owners (*unleſs ſuch as* never *were letten, which is* Caſus omiſſus) to pay according to the *laſt* Rent, (*i. e.* as hath been held, not *laſt* before the Decree, but before the Demand of the Tithes.)

If any Perſon ſhall take any Houſe by Leaſe, and inhabit Part thereof, and let out the Reſidue, in that Caſe the principal Farmer, or firſt Taker, ſhall pay after the Rate aforeſaid, according to his Quantity; and his Executors, Aſſignee or Aſſignees, according to the Quantity of their Rent.

If any Perſon take divers Houſes, *&c.* in one Leaſe, he ſhall pay for what he retains, and his Aſſignees for the Reſt.

Houſes, *&c.* being united or divided, ſhall pay according to the accuſtomed Proportion, and ſo alſo if converted to other Uſes.

Where

Where any Perſon ſhall demiſe any Dye-houſe or Brew-houſe, with Implements convenient, reſerving a Rent upon the ſame, as well in Reſpect of ſuch Implements, as in Reſpect of ſuch Dye-houſe or Brew-houſe, there the Tenant ſhall pay his Tithes after ſuch Rate as above, the third Penny abated: So for every Houſe with Key or Wharf, having any Crane or Gibbet belonging to the ſame; but Shops, Yards, *&c.* being united to a Houſe, ſhall pay to the full Rent, if ſever'd from it.

Tithes ſhall be paid quarterly at *Eaſter*, Nativity of St. *John Baptiſt*, *Michaelmas* and *Chriſtmas*, by even Portions.

Every Houſeholder paying 10*s.* Rent, or above, ſhall be diſcharged of Offerings; but each of the Family taking their Rights of the Church, ſhall pay 2*d.* yearly, at *Eaſter*.

Any Houſe of 10*s.* or above, being let into ſmall Parcels, Tithe ſhall be paid by the Owner, if dwelling in it, or the Principal Leſſee, according to ſuch Rate of Rent as the Houſe was accuſtomed to be letten for, before ſuch Diviſion into ſmall Parcels.

Gardens for Pleaſure appertaining to Manſion-houſes, ſhall pay no Tithe; but if any Perſon, which holdeth any Garden containing half an Acre or more, ſhall make any yearly Profit thereof by Way of Sale, he ſhall pay Tithes for the ſame according to the fore-mentioned Rate; and ſo if divided by Fraud or Covin into leſs Quantities. This Decree ſhall not extend to Houſes of Noblemen kept in their own Hands, and which in Times paſt paid no Tithes; nor Publick Halls, that in Times paſt have paid no Tithes, ſo long as they ſhall continue unletten; nor to Sheds, Stables, Cellars, Timber-yards, or Tenter-yards, which were never Parcel of any Dwelling-houſe, and have not been accuſtomed to pay Tithes. Where leſs than the aforeſaid Rates hath been cuſtomably paid, leſs ſhall continue to be paid.

paid. If any Controverſy ſhall ariſe concerning Tithes, it ſhall be determined by the Lord Mayor of *London*, who, upon Complaint made (*in Writing, and not by Word of Mouth only*) ſhall, by the Advice of Counſel, call the Parties before him, and make a final End of the ſame, with Coſts to be awarded by the Diſcretion of the ſaid Mayor and his Aſſiſtants; or if the Lord Mayor make not an End thereof within two Months, then the Lord High Chancellor, upon Complaint made to him within three Months then next following, ſhall determine it with Coſts: Provided that a Leaſe being taken at a lower Rent than uſual, by Reaſon of Ruins or Decay, *&c.* Payment ſhall be made only according to ſuch Rent.

And by Statute 22 & 23 *Car.* II. *cap.* 15. for the better Settlement of the Maintenance of the Parſons, Vicars and Curates in the Pariſhes of *London*, burnt by the late dreadful Fire there, in Lieu of Tithes, the following Sums of Money were appointed to be paid, *viz.*

Of the Pariſh of	*l.*
Alhallows Lombard-ſtreet.	110
St. *Bartholomew Exchange.*	100
St. *Bridget* alias *Brides.*	120
St. *Bennet Finck.*	100
St. *Michael Crooked-lane.*	100
St. *Chriſtopher.*	120
St. *Dionys Backchurch.*	120
St. *Dunſtan* in the Eaſt.	200
St. *James Garlick-Hythe*	100
St. *Michael Cornhill.*	140
St. *Michael Baſſiſhaw.*	132 *l.* 11 *s.*
St. *Margaret Lothbury.*	100
St. *Mary Aldermanbury.*	150
St. *Martin Ludgate.*	160
St. *Peter Cornhill.*	110

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Of the Pariſh of	l.
St. *Stephen Coleman-ſtreet.*	110
St. *Sepulchre.*	200
Alhallows Bread-ſtreet and St. *John Evangeliſt.*	140
St. *Alban Wood-ſtreet* and St. *Olave Silver-ſtreet.*	170
St. *Anne* and *Agnes*, and St. *John Zachary.*	140
St. *Auguſtine* and St. *Faith.*	172
St. *Andrew Wardrobe* and St. *Anne Blackfryars.*	140
St. *Antholin* and St. *John Baptiſt.*	120
St. *Bennet Gracechurch* and St. *Leonard Eaſtcheap.*	140
St. *Bennet Paul's Wharf* and *Peter's Paul's Wharf.*	100
Chriſt-Church and St. *Leonard Foſter-lane.*	200
St. *Edmund the King* and St. *Nicholas Acons.*	180
St. *George Botolph-lane* and St. *Botolph Billingſgate.*	180
St. *Laurence Jewry* and St. *Magdalen Milk-ſtreet.*	120
St. *Magnus* and St. *Margaret New Fiſh-ſtreet.*	170
St. *Michael Royal* and St. *Mary Vintry.*	140
St. *Matthew Friday-ſtreet* and St *Peter cheap.*	150
St. *Margaret Pattons* and St. *Gabriel Fenchurch.*	120
St. *Mary at Hill* and St. *Andrew Hubbard.*	200
St. *Mary Woolnoth* and St. *Mary Woolchurch.*	160
St. *Clement Eaſtcheap* and St. *Martin Orgars.*	140
St. *Mary Abchurch* and St. *Laurence Pountney.*	120
St. *Mary Aldermary* and St. *Thomas Apoſtle.*	150
St. *Mary le Bow*, St. *Pancras Soper-lane* and *Allhallows Honey-lane.*	200
St. *Mildred Poultry* and St. *Mary Cole-church.*	170
St. *Michael Wood-ſtreet* and St. *Mary Staining.*	100
St. *Mildred Bread-ſtreet* and St. *Margaret Moſes.*	130
St. *Michael Queenhyth* and *Trinity.*	160
St. *Magdalen Old Fiſh-ſtreet* and St. *Gregory.*	120
St. *Mary Somerſet* and St. *Mary Mounthaw.*	110
St. *Nicholas Cole-Abby* and St. *Nicholas Olaves.*	130
St. *Olave Jury* and St. *Martin Ironmonger-lane.*	120
St. *Stephen Walbrook* and St. *Bennet Sheerhog.*	100
St. *Swithin* and St. *Mary Bothaw.*	140
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Which reſpective Sums of Money are to be paid in Lieu of Tithes, over and above Glebes and Perquiſites, Gifts and Bequeſts, ſhall be the Maintenance of the reſpective Incumbents, to be aſſeſſed as therein directed, and paid at the four uſual Feaſts; and in caſe of Refuſal may be levied by Diſtreſs, by Warrant from the Lord Mayor; or in Caſe of his Refuſal or Neglect, of the Lord Chancellor, or two or more of the Barons of the Exchequer.

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202	1	In the Spiritual Court, *Jones (W.)* 254. *Hardr.* 184.	*ibid.*
	7	it was judged, 2 *Len.* 70.	711
	21	annual *Growth*, Palm. 38.	716
	24	*per Legem Terræ*, 3 Cro. 113.	*ibid.*
	31	*Prædial.* 2 Bulſt. 27. Vide Little, 243. 1 Mod. Rep. 50,	*ibid.*
203	24	Beech, Aſp Trees, *&c.* 45 *Ed.* III. *Noy* 30 *Mo.* 541. 1 *Brownl.* 94.	696
	30	Bark, Root and Germens, *March* 65. 1 *Roll. Rep.* 100. *Mo.* 908. 3 *Cro.* 477, *&c.*	*ibid.*
204	2	Not of Timber-Trees, 2 *Cro.* 101. *M.* 762, 908.	713
	9	Dotards, *Mo.* 908.	709
	15	Alders, Birch, Broom, 2 *Cro.* 199. *Mo.* 907. 2 *Bulſt.* 240. 1 *Mo.* 609. 3 *Keb.* 635. *Litt.* 367.	707
	19	For the Owner's Firing, 3 *Cro.* 113. *Mo.* 683. *Little.* 5. 3 *Keb.* 319. *Saund*, 136. 1 *Ventr.* 75. *Siderf.* 447.	716
	31	of *Kent*, &c. 2 *Bulſtr.* 285. *Palm.* 37. *Hetl.* 110.	*ibid.*
205	5	the tenth *Acre*, Hob. 250.	*ibid.*
	15	Nurſeries pay Tithes? 3 *Cro.* 526. *Jones (W.)* 416. *Hardr.* 380.	*ibid.*
	26	Colt, Calf, Lamb, *Regiſtr.* 49. *a.* 1 *Roll. Abr.* 648. *Poph.* 144. *Palm.* 219.	712
206	3	annually: A Cuſtom, *Latch.* 254. 1 *Roll. Abr.* 648.	708

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206	10	unleſs limited otherwiſe, *Sav.* 60.	708
	18	This is fraudulent, 1 *Roll. Abr.* 652.	712
	22	tenth Meal, *Raym.* 277. 1 *Roll. Abr.* 654.	713
	32	when clipped, 1 *Cro.* 702. *Mo.* 910.	717
207	4	Sheep kill'd and ſpent, 1 *Roll. Abr.* 646, 647.	*ibid.*
	18	Neck-Wool, cut off, 1 Roll. *Ab.* 649. *Mo.* 911.	*ibid.*
	26	new Increaſe. 1 *Roll. Abr.* 642.	*ibid.*
	29	a reaſonable Conſideration; 1 *Roll. Abr.* 648.	*ibid.*
208	16	*Engliſh* Canon Law, *Rob. Winchelſ. Ed. Ox.* 197.	693
	31	ſome allowing, *Poph.* 197. Vide *Latch.* 254. 1 *Roll. Abr.* 647.	717
209	6	it has been adjudged, *March*, c. 128.	*ibid.*
	28	Tithes of Agiſtment, *Shower's Caſe* 193.	707
	30	ſo of Cows —— of Horſes, *Poph.* 126. 2 *Cro.* 436. *Hetl.* 93. 1 *Roll. Abr.* 646.	*ibid.*
210	8	Turkeys *feræ naturæ*, Mo. 599.	715
	15	only of *Pidgeons*, 1 Roll. Abr. 644. 2 Roll. Rep. 2.	714
	18	of Bees, 1 *Roll. Abr.* 651. 3 *Cro.* 404.	707
	24	If the *Modus*, Mo. 909. 3 Cro. 467. 2 Bulſtr. 240. 1 Roll. 176.	714
	30	a Buck and a Doe, *Noy* 34.	*ibid.*
211	5.	As Lands which, *Style* 137. 1 *Roll. Abr.* 655. *Hetl.* 60.	710
	18	hath been declared, 1 *Roll. Ab.* 656.	709
	22	But by *Cuſtom*, Noy 108. *Vide Stat.* 2 Ed. VI. c. 13. §. 11.	*ibid.*
	29	If the Soil of an Orchard, 2 *Inſt.* 652. *Hetl.* 85;	714

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212	7	Tithe of Maſt, Sir *Sim. Degg.* 259. upon what Authority he doth not add.	713
	13	*Acorns* which *fall*, Hetl. 27.	706
	17	Every Acre of Hemp, 6 *Ann. cap.* 28. *N. B.* Flax is a ſmall Tithe, notwithſtanding its being ſown in large Fields, 1 *Roll. Ab.* 543. 2 *Lev.* 365.	698 710
	22	Hops are great Tithes, *Hutt.* 78. 4 *Mod. Rep.* 184.	691
	23	no *Modus* for Hops *Siderf.* 443.	712
	28	it hath been ſaid, 2 *Keb.* 36.	*ibid.*
	29	and the tenth Part, 1 *Roll. Abr.* 644.	*ibid.*
213	1	of the Subſtance of the Earth, 2 *Inſt.* 651. 1 *Mod. Rep.* 35. 2 *Keb.* 596.	708
	12	due of *Woad*, 3 Cro. 28. Het. 77.	715
	21	to *cut down* and *ſet out*, Noy 134.	720
	27	become *Lay-Chattels*, 2 Len. 201.	*ibid.*
	30	The *Care* of the Tithes, *Noy* 31	*ibid.*
215	13	The *Modus* is to be ſued, *Hob.* 247. *Noy* 81. *Hetl.* 133.	722
216	11	the Forfeiture, 3 *Cro.* 668. 2 *Cro.* 70. *Mo.* 710. *Inſt.* 159.	729
	19	nor could either, 2 *Cro.* 70. *Mo.* 915.	*ibid.*
	28	*&c.* And being a Contempt, 1 *Siderf.* 88. 1 *Vent.* 30. *Raym.* 52. 1 *Kebl.* 682. *Raym.* 95.	*ibid.*
217	25	Yes, otherwiſe, 2 *Inſt.* 650. *March* 157.	730
	25	But then the Libel, *Godb.* 341.	*ibid.*
219	2	or at leaſt ſo much of it, 1 *Cro.* 736. *Mo.* 911.	732
222	30	in the Spiritual Court, *Noy* 16. 2 *Cro.* 666. 1 *Vent.* 3. 120.	740
223	*ult.*	From the new Corporation, 2 *Anderſ.*	106 742
224	3	Yes, becauſe the Church, 1 *Cro.* 810.	740

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226	26	No; becauſe where a Benefice, 10 *Rep.* 4. 1 *Cro.* 252.	751
228	21	Yes; and that, not only, *Hob.* 337. *Savil* 20.	752
229	1	No; only by Endowment, *Telv.* 87. *March* 11. 4 *Mod. Rep.* 184.	753
	12	Yes; and as he is endow'd, 2 *Cro.* 518. 1 *Sid.* 526.	*ibid.*
230	5	Yes; and, in Strictneſs of Law, 1 *Cro.* 518. 1 *Sid.* 526.	*ibid.*
	26	Either *in the Act of Appropriation*, Style 156.	*ibid.*
231	5	to the Advantage of the Vicar, 1 *Cro.* 633. *Hetl.* 135. 2 *Bulſtr.* 27.	*ibid.*
	11	it has been reſolv'd, 1 *Cro.* 462. *Owen* 58, 74. 2 *Roll. Abr.* 335.	754
	22	No: Original Endowments, *Noy* 3. *Mo.* 761, 780.	*ibid.*
	29	No: Becauſe inaſmuch as, *Hardr.* 328.	*ibid.*
232	11	With this only Exception, *Poph.* 144.	*ibid.*
	15	Yes, where the Appropriation, 2 *Roll.* 97. 2 *Cro.* 514. *Palm.* 113.	*ibid.*
	21	Into a Parſonage Preſentative, 2 *Cro.* 518.	*ibid.*
	28	No ſomething ought, 2 *Cro.* 873.	*ibid.*
237	1	they are *abſolutely* prohibited, 10 *Rep.* 60. *a.*	770
238	6	Biſhops may make, 10 *Rep.* 60. *b.*	*ibid.*
239	14	No, the whole Grant is void, *Ley* 71. 3 *Cro.* 47.	*ibid.*
	17	in that Caſe the Grant is good 2 *Brownl.* 137. 3 *Cro.* 49, 280. *Ley* 71.	*ibid.*
	22	Yes, but one for Life only, 3 *Cro.* 259.	*ibid.*
	27	Grant of an Office in Reverſion, 3 *Keb.* 474. 2 *Lev.* 138.	771

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239	30	and where there are particular Inſtances, *Jones (W.)* 311. 4 *Mod. Rep.* 17.	771
240	6	They muſt in the firſt Place, 3 *Cro.* 50.	*ibid.*
	19	Yes, it has been held ſo, 3 *Cro.* 48.	*ibid.*
241	14	nor may they make, 1 *Cro.* 564.	775
	18	properly Dean, *Noy* 94. *Palm.* 460, vide *Code*	782
	19	that the Chapter be, *Dav.* 42. *b.* 48. *a.* 43. *a.* 57. *b.*	*ibid.*
	24	After the Making, *Owen* 33. 4 *Len.* 23.	*ibid.*
	31	It hath been adjudged, 3 *Cro.* 38.	*ibid.*
242	6	a Confirmation, being, 1 *Inſt.* 300. *b.* 1 *Roll. Abr.* 480.	*ibid.*
	11	if *Tenant in Tail*, 1 Roll. 361.	*ibid.*
	16	if the Patron who confirms, 3 *Cro.* 582. *Jones* 454.	*ibid.*
	23	Such Confirmation ſhall not, 1 *Roll. Abr.* 480.	*ibid.*
	30	*Conjunctim vel Diviſim*, Noy 116. Yelv. 106.	776
243	3	That only which is voluntary, *M.* 448.	*ibid.*
	11	to his Curate only, 13 *Eliz. cap.* 20.	*ibid.*
244	10	Demand of Rent, 1 *Inſt.* 201. *b.* 1 *Cro.* 48, 167. *Dyer* 329. *a.* 3 *Len.* 4. *Anderſ.* 27. 1 *Inſt.* 202. *a.* 4 *Len.* 180.	782
	28	a Difference muſt be made, *Allen* 94.	*ibid.*
245	1	Yes; by Acceptance, *Poph.* 121.	783
	30	their *own Act*, Hetl. 24. 1 Roll. Abr. 476.	*ibid.*
246	1	No; as in a Leaſe, 2 *Cro.* 173. *Hardr.* 326.	*ibid.*
	11	the King might, 2 *Cro.* 518.	786
248	1	enforce Reparation, 3 *Bulſtr.* 158. 3 *Inſt.* 204.	791
	11	the Incumbent may be reſtrain'd, 2 *Bulſt.* 279. 3 *Bulſt.* 158. 1 *Rolle Rep.* 335.	*ibid.*

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249	9	which ſeems not to be well grounded, *vide* the *Codex*, 1 *Lev.* 268. but *vide* alſo 3 *Lev.* 413.	792
250	18	as we are told, Sir *Sim. Degg.* Part 1. c. 10.	791
251	6	The *Money* ſhall be paid, *Ref. Leg.* 39. *b.*	795
	11	No, becauſe not coming in, 3 *Keb.* 614.	792
253	8	that is to the *Demeſnes*, 1 *Inſt. l.* 2. §. 184.	796
	32	Yes. As, 1. if the Advowſon, *Hetl.* 14. *Hutt.* 88. 1 *Inſt.* 333. *b. Hob.* 140.	*ibid.*
255	19	it is a Rule in Law, 1 *Inſt.* 17. *b.*	*ibid.*
	24	in a Caſe where, *Hob.* 304.	*ibid.*
256	12	1. that it extends not to, 3 *Cro.* 207, 440, 690.	797
	30	the *void Turn it ſelf*, Dyer 26. *a.* 283. *a.*	*ibid.*
	ult.	as the Law-Books ſpeak, *Dyer* 283, *a.*	*ibid.*
257	25	In the Parſon: But it may, *Mo.* 896. 2 *Cro.* 386. 1 *Roll.* 235.	*ibid.*
258	14	Advowſon ſhall not paſs, 10 *Rep.* 64. *b.* 17 *Edw.* II. *c.* 15.	799
	21	Plenarty by ſix Months, 17 *Edw.* II. *c.* 8.	*ibid.*
259	4	Upon Promotion of any, 1 *Cro.* 527, 542, 601, 790, *&c.*	803
	25	Yes, for his Right was, 2 *Cro.* 691.	*ibid.*
260	8	although the King hath Right, *Vaugh.* 26. *Yelv.* 91.	804
	27	Each ſhall be ſeized in Law, 7 *Ann. cap.* 18.	805
261	6	Six *Kalendar* Months, 2 *Inſt.* 361. 2 *Cro.* 141. 6 *Rep.* 62. *a. Yelv.* 100, *&c.*	809

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261	26	where a Spiritual Perſon, 2 *Roll. Abr.* 364. 4 *Mod. Rep.* 140. *Keilw.* 49. *b.*	809
262	4	Tho' the Patron, 2 *Roll. Abr.* 364. 4 *Mod. Rep.* 140.	*ibid.*
	15	No: But if he does, 2 *Roll. Abr.* 365. 3 *Cro.* 93. *Hob.* 200.	*ibid.*
263	1	No, even tho' the Lapſe, 2 *Cro.* 93. 2 *Roll. Abr.* 365.	*ibid.*
	16	to the Metropolitan, *Noy* 69. *vide* the *Code.*	810
	22	No: He may preſent, 2 *Roll. Abr.* 367.	*ibid.*
	30	All the Law-Books agree, *Hob.* 157. 2 *Roll. Abr.* 368. *Mo.* 900. *Hutt.* 24.	*ibid.*
	32	the Patron is wholly diſabled, *Hob.* 157. 2 *Roll. Abr.* 368. *Mo.* 900. *Hutt.* 24.	*ibid.*
268	24	it is of no Force in this, *&c.* 2 *Cro.* 463. *Poph.* 133. 1 *Roll.* 227.	815
270	2	if ſuch Patron makes good, *Hob.* 318.	816
	13	Then the other is without all Remedy, 1 *Lenn.* 168.	*ibid.*
272	29	The *Civilians* ſay, that the Commiſſioners, vide *Watſon Cl. Law.*	
273	2	When a Stranger that hath no Right, 1 *Inſt.* 227. *b.*	821
	9	the true Patron within ſix Months, 1 *Inſt.* 344. *b.*	822
274	12	By the Writ *De vi laica amovenda,* Nat. Br. f. 54.	*ibid.*
276	1	But if the Archbiſhop doth decree, *Mo.* 862, 879.	823
	19	*a Writ of Right?* Regiſtr. f. 29 b.	824
	23	a Writ of *Darrein Preſentment?* Regiſtr. f. 30. a.	*ibid.*
277	2	it was provided chiefly, 2 *Inſt.* 356.	*ibid.*
	17	*Ne admittas?* Nat. Brev. f. 37.	*ibid.*
	25	Within *ſix Months,* Nat. Brev. f. 83.	*ibid.*

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278	2	*Quare Incumbravit*, Regiſtr. f. 32. *b.*	824
	26	tho' he hath not collated, yet, 2 *Inſt.* 360.	826
279	7	Yes; *if the Church be not filled*, Watſon, cap. 24. 2 Cro. 93.	
	24	No: If a *Quare Impedit* be brought.	*ibid.*
280	12	to which he may return, *Boniface. Edit. Ox.* 217.	831
	13	Some think it adviſable, *Watſon*, *cap.* 28. *p.* 225 *&* 227. *Hetl.* 130.	
282	27	If the Diſability grow by any Act, 2 *Inſt.* 632.	834
283	2	a Diſtinction hath been found out, 1 *Inſt.* 344. *a.* 1 *Roll.* 191. 1 *Siderf.* 390.	*ibid.*
	24	† by Word or Writing, 1 *Inſt.* 120. *a.*	836
	30	No: The Preſentation muſt be by Huſband, *March* 90.	835
284	3	Yes; but the Right, 1 *Inſt.* 29. *a.*	*ibid.*
	9	in the Name of the Infant, 3 *Inſt.* 156.	*ibid.*
	16	Whether the Church be full, *Dyer* 135. *a.* 1 *Inſt.* 388. *a.*	*ibid.*
	23	unleſs the Incumbent, 3 *Lev*, 47. 1 *Leon.* 205.	*ibid.*
285	32	Where a Corporation aggregate, *Style* 156.	836
286	6	the more legal and regular Way, *Mo.* 5.	*ibid.*
	18	The general Doctrine, *Latch.* 192. 1 *Inſt.* 344. *Mo.* 443.	*ibid.*
287	8	The Power of Varying belongs not, *Keil.* 154.	*ibid.*
	15	*Potior qui Prior*, Extrav. l. 3. t. 38. c. 24.	836
290	5	or the Procuring of it, 3 *Cro.* 331, 337, 361. *Jones (W.)* 341.	840

† *But I conceive the Law is otherwiſe ſince the Stamp-Act.*

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290	10	If the next Preſentation, *March* 158. 1 *Brownl.* 164. 2 *Brownl.* 7, 8. *Noy* 25.	840
	16	If the next Preſentation, a particular Perſon by *Name*, Noy 25.	*ibid.*
	19	If one Promiſe to a Clerk, *Little.* 177.	841
	26	when the Incumbent is ſick, *Winch.* 63. 1 *Cro.* 685.	*ibid.*
291	4	Yes, and ſo it is with Regard, 12 *Rep.* 73, 100. 3 *Lev.* 337. 2 *Cro.* 385.	*ibid.*
	7	and where the Contract was between the Father, 3 *Cro.* 331.	*ibid.*
	22	They have been declared Simoniacal, 2 *Cro.* 248.	842
292	8	declared good in Law, 2 *Cro.* 248. 3 *Cro.* 180.	*ibid.*
	30	it has been ſaid, *Watſon's Clerg. Law* 65.	
293	11	Yes, corrupt Donation being, 3 *Cro.* 331.	843
	17	no Need of Deprivation, *March* 87.	*ibid.*
	19	deny their Tithes, *Litt.* 177.	*ibid.*
	22	In the Crown for that turn, and that, *Noy* 25. *Mo.* 878. 1 *Brownl.* 164.	*ibid.*
	25	and no other is in Poſſeſſion, 1 *W. & M. c.* 16.	*ibid.*
	27	But if any Perſon hath, 1 *Inſt.* 180. *a.*	*ibid.*
294	2	it hath been ſaid, *Tanfield* in *Calvert* and *Kitchin's* Caſe	844
	19	but not *diſabled* to take any other, 3 *Inſt.* 154.	*ibid.*
295	29	If he gives Inſtitution, 1 *Cro.* 699.	847
297	2	It hath been held, 1 *Cro.* 79.	848
	29	it has been *adjudg'd*, Shower's Caſes 88. 4 Mod. Rep. 134, 3 Lev. 311.	850
298	15	Yes, as rendring the Clerk, 1 *Cro.* 119. 1 *Lev.* 31.	851

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298	18	All ſuch Cauſes as are ſufficient, 5 *Rep. f.* 58. *a.*	851
299	12	not properly Crimes, but Incapacities, 2 *Inſt.* 632. 4 *Inſt.* 338. *a.*	*ibid.*
	15	as my Lord *Coke* held, *vide* the *Codex*, 7 *Ric.* II. *c.* 12.	94
	25	what Crimes, or what Schiſmatical Acts, 2 *Inſt.* 632. 5 *Rep.* 57. *b.* 3 *Lev.* 198.	*ibid.*
300	4	Not if a new Clerk, 1 *Cro.* 27.	*ibid.*
301	22	But herein they differ, *Mo.* 443.	858
302	3	Becauſe the Biſhop would be Judge, 1 *Inſt.* 344 *b.*	*ibid.*
	15	It enables, 3 *Keb.* 571.	*ibid.*
	25	In the Spiritual Court, but not if, *Litt.* 140, 176. 3 *Keb.* 325, 423.	*ibid.*
303	5	they may have a *Certiorari*, 2 Inſt. 358.	*ibid.*
	31	for by this he is ſeiz'd, *Plowd.* 528. *Dyer* 21 *b.* 2 *Roll.* 451.	859
304	17	that it is cogniſable only, *&c.* 1 *Bulſtr.* 179. *Littl.* 165. 2 *Lev.* 125. *Hob.* 15. *Latch.* 205, *Siderf.* 293. *Mo.* 861.	860
	22	the Archdeacon, if he refuſes, 12 *Rep.* 128. 1 *Roll.* 63. *Mo.* 836.	*ibid.*
311	29	It is no longer a Donative, 1 *Inſt.* 344. *a.* 2 *Cro.* 63. *Styles* 172.	866
313	30	It can only be made to a *Superior*, 1 Rolle 137.	869
314	21	as appears by that plain Reſolution, *Noy* 147. 2 *Cro.* 63. 198.	*ibid.*
317	7	They have four Years, 6 *Ann. cap.* 27. which ſhall commence from the Time of Reſtitution of their Temporalties,	920
318	9	From the Avoidance. *N. B.* That in Biſhopricks it commences from	883

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		from the Reſtitution of the Temporalties.	920
320	8	But nothing is ſufficient, *6 Rep.* 21. *b.* *1 Cro.* 490. *2 Brownl.* 54.	869
324	15	it has been adjudged, *4 Rep.* 79. *a. Mo.* 443, 448.	945
	24	Tho' the Patron may preſent, *Mo.* 542. *Jones (W.)* 336, 337. *2 Roll. Abr.* 364. *Godb.* 23.	946
326	6	He remains Chaplain, *Godb.* 42.	949
	15	No, nor diveſt thoſe, *4 Rep.* 89. *b. Mo.* 277. *Sav.* 102.	*ibid.*
	26	He can only qualify, *4 Rep.* 90. *a.*	*ibid.*
	30	the Retainer is good, *4 Rep.* 119. *a. Mo.* 678.	*ibid.*
327	11	Minors retain, *4 Rep.* 119. *a*	947
328	13	in regard to *Statutes*, 1 Will. & Mar. Seſſ. 2. c. 2.	951
329	29	Becauſe the Poſſeſſion, *Noy* 93. *Jones (W.)* 158. *Latch.* 133. *Palm.* 344. *Vaug.* 19.	954
330	1	both of Common and Canon Law.	133
	12	as many of the Law-Books hold, *Hob.* 453, 457, 468. *1 Cro.* 542. *Hob.* 154.	954
332	1	for then the Turn of the Crown is ſerv'd, *Dyer* 228. *b. 4 Mod. Rep.* 212.	956
	10	but it muſt be by a *new Diſpenſation*, *2 Roll.* 453. *Noy* 92.	*ibid.*
333	4	No: The Statute is, *1 Cro.* 501.	957
335	3	the Common Law of Unions, *1 Cro.* 500, 501.	961
	10	Yes; and therefore, *Plowd.* 499. *b.*	962
	18	No; the Nature of Advowſons, *Dyer* 359. *b.*	*ibid.*
	32	Yes; becauſe by Union, *1 Cro.* 720.	*ibid.*
337	16	what my Lord *Coke* ſays, *Mo.* 782.	967

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337	22	As, when Iſſue, 5 *Rep. Caudry's* Caſe, *H.* 3.	967
341	24	The Convocation with the Licence, 2 *Ventr.* 41. *Vaugh.* 327.	974
351	3	The Articles are offer'd only, 1 *Ventr.* 127.	1001
355	15	properly *Ordinarius*, 2 Cro. 556. Palm. 97. Siderf. 302. 1 Lev. 193.	1009
356	*Penult*,	Yes, tho' it is but, 1 *Cro.* 141. *Owen* 99.	1010
361	26	In the Spiritual Court, *Raym.* 360. 3 *Whitg.* 137. *a.*	1017
364	21	Tho' they principally concern, 3 *Inſt.* 148. 12 *Rep.* 78. 2 *Cro.* 269.	1020
365	1	It was ſo reſolv'd, 3 *Inſt.* 154. 2 *Cro.* 386. *Hob.* 75.	1021
	7	It belongs to the Crown, 2 *Ventr.* 188, 267.	1021
	14	it hath been declared, 3 *Cro.* 47, 259. 2 *Lev.* 136. 4 *Mod. Rep.* 17, 18. 3 *Keb.* 506. *Show.* 289. 2 *Ventr.* 187.	1023
366	27	In viſiting Churches, *&c.* vide *Wood's Inſtitute of the Law of England.*	
369	7	as for Divorces, *&c.* Can. 108, 114, 121.	1028
370	4	No Eccleſiaſtical Judge, *Conſt. Otho. A. D.* 1237. *Othob.* 1268.	1029
372	24	He ſhall have an Action upon the Caſe, 12 *Rep.* 127. 2 *Bulſt.* 264. 1 *Rolle* 63. *Mo.* 835.	1039
373	3	ſuch an Action was brought, 3 *Cro.* 291.	*ibid.*
378	25	Judgments upon this Caſe, *&c.* 2 *Cro.* 37 *Mo.* 746. *Noy* 101. 3 *Bulſt.* 51. 3 *Keb.* 508. *Raym.* 170. 1 *Siderf.* 232. 1 *Keb.* 824.	1051

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379	2	which Prohibition the more modern Books, 1 *Vent.* 252. 3 *Keb.* 565.	1052
	20	It hath been ſo reſolv'd, 2 *Cro.* 388.	1051
380	10	Yes, where the Courſe, 1 *Ventr.* 339.	1054
	16	He may plead, 1 *Siderf.* 374.	*ibid.*
381	2	But the more modern Reports, 1 *Ventr.* 291. 2 *Inſt.* 680. 2 *Mod. Rep.* 283.	*ibid.*
382	13	In the Spiritual Courts, 1 *Mod. Rep.* 167.	1058
383	22	my Lord *Coke* lays down, 12 *Rep.* 39. 2 *Cro.* 133, 134.	1063
385	20	Prohibition lies not, 13 *Edw.* I. *Circumſpecte agatis.*	1068
	30	the Plaintiff, 2 *Inſt.* 607. *Art.* 10. 2 *Cro.* 305.	1071
387	5	Yes: But notwithſtanding, *Co.* 12 *Rep.* 65. 2 *Bulſt.* 283. 1 *Roll. Rep.* 61.	1072
	13	When the Iſſue of a Matter, 2 *Inſt.* 614.	1073
	23	No; otherwiſe no Crimes, 1 *Cro.* 789.	*ibid.*
	27	No: Nay it hath been reſolv'd, *Yelv.* 55. 1 *Cro.* 736. 2 *Rep.* 43.	*ibid.*
388	5	No, 2 *Roll.* 456. *Latch.* 7. 1 *Keb.* 107.	1074
	10	Yes, 2 *Inſt.* 602. 1 *Siderf.* 332.	*ibid.*
	15	It has been adjudg'd, *Litt.* 365. *Hetl.* 167.	*ibid.*
	28	Becauſe the Court, *Co.* 12 *Rep.* 41.	1075
389	5	Not if the Conſultation, 50 *Edw.* III. *cap.* 4.	*ibid.*
	6	that is, upon the Subſtance, *Yel.* 132. 3 *Cro.* 208. *Jones (W.)* 231.	1076
	19	Where the Common or Statute, *Co.* 1 *Inſt. f.* 69.	1077

System. Page	Line		Codex. Page.
389	26	*Which it is ſuppoſed to be*, Co. 5 Inſt. Cawdry's *Caſe*. 1 Cro. 501, 684. Latch. 68. 2 Lev. 222.	1073
390	1	They may not, *Hob.* 121. 2 *Cro.* 430.	1078
391	9	No ſuch Appeal, *Dyer* 209. *a. Co. Sel. Caſ.* 70.	1082
	13	the *King's Delegates*, 4 Inſt. 340. Mo. 782.	*ibid.*
	21	Yes, but the King, 4 *Inſt.* 341. *Littl.* 232.	1083
392	1	and it might be adviſable. *Vide* the introductory Diſcourſe to the *Codex*, *p.*	XXI
	29	particularly adjudg'd, 1 *Ventr.* 135. 2 *Kebl.* 768.	1082
393	13	No Inhibitions, *vide* Can. 96, 97.	1084
400	8	an expreſs Act of Parliament, 5 *Edw.* VI. *c.* 4 §. 1.	1093
404	25	*Debitum Juſtitiæ*, Regiſtr. 681.	1102
408	26	*Want of Abilities*, Hob. 149.	1116
		ib. Want of Age, 5 Rep. 58. *a.*	*ibid.*
	28	*Simony*, 1 Rolle 235, *&c.*	*ibid.*
		ib. Infidelity, 5 Rep. 57. *b.* 58. *a.*	*ibid.*
	30	*Incontinence*, 6 Rep. 13. *b.* 1 Cro. 41, 789. Hob. 293.	*ibid.*
	31	*Drunkenneſs*, 1 Brownl. 70. 2 Brownl. 71.	*ibid.*
	33	*Perjury*, 5 Rep. 58. *a.*	*ibid.*
409	1	My Lord *Coke*, 3 Inſt. 204.	*ibid.*
	18	A Pardon is a Bar, 5 *Rep.* 51. 3 *Inſt.* 238. 5 *Inſt.* 51. *a.*	1117
	22	A Pardon, 3 *Cro.* 199.	*ibid.*
410	1	The Pardon takes away, *Noy* 91. *Latch.* 190.	*ibid.*
410	20	And this is not only applied, 1 *Cro.* 41, 6 *Rep.* 13. *a*, *Latch.* 22.	118

Syſtem. Page	Line		Codex. Page.
420	17	It has been held, 2 *Kebl.* 544, 538. 1 *Ventr.* 41.	1143
422	18	Yet 'tis ſaid by my Lord *Coke*, 10 *Rep.* 31. *a. Noy* 91.	1148
425	12	No; where the Land is given, *&c. Law of Charitable Uſes, p.* 68. Caſe of *Morpeth* in *Northumberland*, 5 Car. 1. and of *Sutton Colfield Com. Warw.* 11 Car. 1	1158
429	27	The Claim of Clergy, *Hob.* 289. *Kel.* 100.	1168
444		23 Becauſe, whereas before, *Hob.* 297. 2 *Rep.* 47. *b.*	702
446	13	Caſe of the Lord *Cheney*, 1 Inſt. *f.* 342. *a.*	1232
447	12	it was reſolv'd, *Hob.* 121. *Mo.* 863. 1 *Brownl.* 178.	*ibid.*

NUMB. VII.

NUMB. VII.

His Grace the Archbiſhop of *Canterbury*'s Letter to the Right Reverend the Lords Biſhops of His Province.

Weſtminſter, June 5. 1716.

My very good Lord,

BEING by the Providence of God called to the Metropolitical See of this Province, I thought it Incumbent upon Me to conſult as many of my Brethren the Biſhops of the ſame Province, as were here met together during this Seſſions of Parliament, in what manner We might beſt employ that Authority which the Eccleſiaſtical Laws now in force, and the Cuſtom and Laws of this Realm, have veſted in Us, for the Honour of God, and for the Edification of His Church, committed to Our Charge: And upon ſerious Conſideration of this Matter, We All of Us agreed in the ſame Opinion, that We ſhould, by the Bleſſing of God upon our Honeſt Endeavours, in ſome meaſure promote thoſe good Ends, by taking Care (as much as in us lieth) that no Unworthy Perſons might hereafter be admitted into the Sacred Miniſtry of the Church; *Nor any* be allowed to ſerve as Curates, but ſuch as ſhould appear to be duly qualified for ſuch an Employ; *And that* all who Officiated in the Room of any Abſent Miniſters, ſhould reſide upon the Cures which they undertook to ſupply; *and* be aſcertain'd of a ſuitable Recompence for their Labours.

In

APPENDIX.

In purſuance of thoſe Reſolutions, to which We unanimouſly agreed, I do now very earneſtly, Recommend to You;

I. THAT you require of every Perſon who deſires to be admitted to Holy Orders, that he ſignify to you his Name and Place of Abode, and tranſmit to you his Teſtimonial, and a Certificate of his Age duly atteſted, with the Title upon which he is to be Ordained, at leaſt Twenty Days before the Time of Ordination; and that he appear on *Wedneſday*, or at fartheſt on *Thurſday* in *Ember Week*, in order to his Examination.

II. That if you ſhall reject any Perſon, who applies for Holy Orders, upon the Account of Immorality proved againſt him, you ſignify the Name of the Perſon ſo rejected, with the Reaſon of your rejecting him, to Me, within one Month; that ſo I may acquaint the reſt of my Suffragans with the Caſe of ſuch rejected Perſon before the next Ordination.

III. That you admit not any Perſon to Holy Orders, who having reſided any conſiderable Time out of the Univerſity, does not ſend to you, with his Teſtimonial, a Certificate ſigned by the Miniſter, and other credible Inhabitants of the Pariſh, where he ſo reſided, expreſſing that Notice was given in the Church, in Time Divine Service, on ſome *Sunday*, at leaſt a Month before the Day of Ordination, of his Intention to offer himſelf to be Ordained at ſuch a time; to the end that any Perſon who knows any Impediment, or Notable Crime, for the which he ought not to be Ordained, may have Opportunity to make his Objections againſt him.

IV. That you admit not Letters Teſtimonial, on any Occaſion whatſoever, unleſs it be therein expreſſed, for what particular End, and Deſign, ſuch Letters are granted; nor unleſs it be declared by thoſe who ſhall ſign them, that they have perſonally known the Life and Behaviour of the Perſon for the Time by them Certi-

fied; and do believe in their Conſcience, that he is qualified for that Order, Office or Employment, to which he deſires to be admitted

V. That in all Teſtimonials ſent from any College or Hall, in either of the Univerſities, you expect that they be ſign'd, as well as ſeal'd; and that among the Perſons ſigning, the Governour of ſuch College, or Hall, or in his Abſence, the next Perſon under ſuch Governour, with the Dean, or Reader of Divinity, and the Tutor of the Perſon to whom the Teſtimonial is granted, (ſuch Tutor being in the College, and ſuch Perſon being under the Degree of Maſter of Arts,) do ſubſcribe their Names.

VI. That you admit not any Perſon to Holy Orders upon Letters Dimiſſory, unleſs they are granted by the Biſhop himſelf, or Guardian of the Spiritualities *Sede vacante*, nor unleſs it be expreſſed in ſuch Letters, that he who grants them, has fully ſatisfied himſelf of the Title and Converſation of the Perſon to whom the Letter is granted.

VII. That you make diligent Enquiry concerning Curates in your Dioceſe, and proceed to Eccleſiaſtical Cenſures againſt thoſe who ſhall preſume to ſerve Cures without being firſt duly Licenſed thereunto; as alſo againſt all ſuch Incumbents who ſhall receive and employ them, without firſt obtaining ſuch Licence.

VIII. That you do not by any Means admit of any Miniſter, who removes from any other Dioceſe, to ſerve as a Curate in yours, without Teſtimony of the Biſhop of that Dioceſe, or Ordinary of the peculiar Juriſdiction from whence he comes, in Writing, of his Honeſty, Ability, and Conformity to the Eccleſiaſtical Laws of the Church of *England*.

IX. That you do not allow any Miniſter to ſerve more than one Church or Chapel in one Day, except that Chapel be a Member of the Pariſh Church, or united thereunto; and unleſs the ſaid Church or Cha-

pel,

pel, where ſuch a Miniſter ſhall ſerve in two Places, be not able in your Judgment to maintain a Curate.

X. That in the Inſtrument of Licenſe granted to any Curate, you appoint him a ſufficient Salary, according to the Power veſted in you by the Laws of the Church, and the particular Direction of a late Act of Parliament for the better Maintenance of Curates.

XI. That in Licenſes to be granted to Perſons to ſerve any Cure, you cauſe to be inſerted, after the Mention of the particular Cure provided for by ſuch Licenſes, a Clauſe to this Effect, *or in any other Pariſh within the Dioceſe, to which ſuch Curate ſhall remove with the Conſent of the Biſhop.*

XII. That you take care, as much as is poſſible, that whoſoever is admitted to ſerve any Cure, do reſide in the Pariſh where he is to ſerve; eſpecially in Livings that are able to ſupport a Reſident Curate: And where that cannot be done, that they do at leaſt Reſide ſo near to the Place, that they may conveniently perform all their Duties both in the Church and Pariſh.

Theſe, My Lord, were the Orders and Reſolutions, to which We All agreed; and which I do hereby tranſmit to You; deſiring you to Communicate them to the Clergy of your Dioceſe, with an Aſſurance that you are Reſolved, by the Grace of God, to direct your Practice, in theſe Particulars, agreeably thereunto. And ſo commending you to the Bleſſing of God in theſe, and all Your other pious Endeavours, for the Service of his Church, I heartily remain,

My very Good Lord,

Your truly affectionate Brother,

W. Cant.

NUMB. VIII.

Formula Literarum Teſtimonialium.

Reverendo in Chriſto Patri, Ricardo, Epiſcopo Lincolnienſi, &c.

CUM W. W. e Collegio ——— A. B. Sacros [Diaconatus] Ordines ambiens, Literas Noſtras Teſtimoniales de vita ſua Laudabili Morumque Integritate ſibi a Nobis concedi petierit, Nos Infraſcripti teſtamur et per præſentes teſtatum Volumus prædictum W. W. per tres annos proxime elapſos, ex perſonali Noſtra Cognitione, Vitam ſuam Pie, Sobrie, et Honeſte inſtituiſſe, in Bonis Literis Operam Sedulo Navaſſe, nec quidquam quod Scimus tenuiſſe aut Evulgaſſe, niſi quod Eccleſia Anglicana approbat et tuetur: Eum inſuper Dignum Cenſemus, Qui ad Sacros [Diaconatus] Ordines admittatur. In cujus rei Teſtimonium Nomina Noſtra hiſce literis Subſcripſimus ——— die menſis ——— Anno Domini

NUMB. IX.

The Form of a TITLE.

To the Right Reverend the Lord Biſhop of LINCOLN.

IT is hereby certify'd, That I, *N. N.* Rector of *B*——— in the County of ——— and in your Dioceſe of *Lincoln*, do hereby nominate and recommend *W. W.* of ——— College in the Univerſity of ——— *A. B.* to be my Curate in my Pariſh-Church of *B*——— in the County of ——— and I do promiſe to allow him the yearly Sum of ——— Pounds, or ſuch other Salary as ſhall be aſſigned according to Law, for his Maintenance in the ſame, and to continue him therein until he ſhall be otherwiſe provided of ſome Eccleſiaſtical Preferment, unleſs he ſhall for any Fault by him committed be Lawfully removed from the ſame.

And I do declare, That I do not fraudulently give this Certificate, only to Entitle the ſaid *W. W.* to the receiving of Holy Orders; but with a true and real Intention to employ him as my Curate, according to what is before expreſs'd. Witneſs my Hand and Seal this ——— Day of ——— in the Year of our Lord ———

N. N.

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